

timony, on the cross-examination of all of them, except the master and mate of the Crawford, deprives it of any value; and it is extremely improbable that the man on board the Blanche L. should have done the opposite of what he was previously directed to do by the captain of the Crawford, if any definite instructions were, in fact, given to him, beyond the direction to "single out" on notice after getting into the stream, which I very much doubt.

The proper cause of the trouble, and the real fault are to be looked for in the general management on the part of the tug, rather than in any of the minute details when trouble arose. In this case there are two clear faults of management that properly charge the tug with responsibility for this accident:

(1) In needlessly taking the two scows abreast out into the strong flood tide before "singling" them out, instead of putting them in position, as the tug might easily have done, in the still water of the Thirtieth street slip, before going out.

(2) After having got out into the tide, in prematurely giving the order to "single out," i. e. before the tug was sufficiently away from the docks to allow waiting a sufficient time for the Blanche L. to be properly made fast astern of the Atalanta, whichever mode of singling out might be adopted. The tide set strongly towards the docks; and by stopping to single out while still near the docks, the Crawford was soon compelled to start up full speed to avoid drifting against vessels along the docks, although her captain saw that something was wrong with the Blanche L. It was this start that prevented properly making fast the hawser on the Blanche L. The mode of "singling out" adopted by the Blanche L. was not improper or unusual; while the mode which the master of the Crawford testifies that he directed in this instance, contrary to the testimony of the man on the Blanche L., would have placed the latter in an undesirable position for towing, viz., with her stern ahead and much deeper in the water than the other end.

There is no sufficient evidence in my judgment to convict the Blanche L. of blame; the immediate fault which caused the accident being in ordering the Blanche L. to single out before the boat got far enough away from the docks to do so safely, whichever mode of singling out was adopted.

Decrees against the Crawford in the three cases. The libels against the Blanche L. and the Thompson are dismissed.

THE FLORENCE.

THE ELDORADO.

CLYDE STEAMSHIP CO. v. THE FLORENCE et al.

(District Court, S. D. New York. May 2, 1895.)

COLLISION—RIGHT OF WAY—STARBOARD-HAND RULE—LEAVING DOCK—CONTRARY SIGNALS.

The large steamer E., on leaving her dock in North river, gave a signal of two whistles to the tug F., which was coming down river on the E.'s

starboard hand with a tow on a hawser. The attention of the master of the F. was then occupied with another tug which was crossing his bow, and he did not hear the E.'s signal, but soon gave to the E. a signal of one whistle, which was not heard on the E.; and the E. came in collision with the tow about 800 or 1,000 feet outside of the piers: *Held*, that the E. was alone to blame for not stopping in time, as she might have done, after the course of the F. was seen; and that the E.'s failure to get a signal in reply to her two whistles was equivalent to a dissent by the F., which held the E. bound to observe the starboard-hand rule, and go astern of the F., which had the right of way.

This was a libel by the Clyde Steamship Company, owner of the lighter Potomac, against the steam tug Florence and the steamer Eldorado, to recover damages for a collision.

Robinson, Biddle & Ward, for libelant.

Carpenter & Park, for the Florence.

Charles H. Tweed and R. D. Benedict, for the Eldorado.

BROWN, District Judge. As the steamship Eldorado, 355 feet long, was leaving her berth on the south side of pier 25, in the afternoon of October 23, 1894, and rounding down the North river, she came in collision with the libelant's lighter Potomac, which was going down river in tow of the tug Florence, upon a hawser about 70 feet long. The collision was nearly at right angles, and from 800 to 1,000 feet off the end of the piers. The tide was the last of the flood, and the wind was light. The above libel was filed for damages to the lighter and cargo.

The Eldorado, on starting ahead, gave the long whistle required by law, which was not heard by the pilot of the Florence, whose attention was occupied probably with the Peene, a propeller which had just started from the pier below the Eldorado, and was proceeding to cross the Florence's bows, compelling the latter to slacken her speed. A shed on the pier prevented the master of the Eldorado, on starting, from seeing what was in the river above, until he had moved ahead about 150 feet. When his pilothouse had got beyond the outer end of the shed, he saw the Florence coming down on his starboard hand, and he gave her a signal of two whistles, indicating that he intended to go ahead of her. That signal also was not heard by the Florence; but soon afterwards she gave a signal of one whistle to the Eldorado, which was not heard by the latter. The Eldorado, however, soon gave another signal of two whistles, to which the Florence replied with one, which also was not heard by the Eldorado. Soon afterwards the Eldorado reversed, but too late to avoid collision.

There is some difference in the testimony as to the distance of the stern of the Eldorado from the ends of the piers when her second signal of two whistles was given. Not only the captain's testimony, however, but the weight of the other testimony, indicates that this second signal was given before the stern of the Eldorado was outside of her dock. The master of the Eldorado seems to have supposed that by giving a signal of two whistles he had the right of way, and that the Florence was bound to stop, although she was on the Eldorado's starboard hand. The requirement of the nine-

teenth article of the rules of navigation is, however, precisely opposite; and the case of *The Breakwater*, 155 U. S. 252, 15 Sup. Ct. 99, is a recent instance of the enforcement of that article.

I think that the blame for this collision must rest wholly with the *Eldorado*. The *Florence*, under the rules, was bound to keep her course, and the *Eldorado* to keep out of her way. There was abundant room for the latter to do so, had she chosen to observe the nineteenth article, and go astern of the *Florence*. In proposing, by her signal of two whistles, to go ahead of the *Florence*, contrary to the rule, "she took the risk, both of her own whistles being heard, and in turn of hearing the response, if a response was made." *The St. John*, 7 Blatchf. 220, Fed. Cas. No. 12,224; *The Milwaukee*, 1 Brown, Adm. 313, Fed. Cas. No. 9,626; *The John King*, 49 Fed. 472, 479. See, also, *The El Rio*, 66 Fed. 360. The collision was at such a distance from the docks that it could not possibly have occurred had not the *Eldorado* too long persisted in her proposal, without any assent by the *Florence*, to go ahead of her in violation of rule 19.

I do not perceive that the *Florence* is chargeable with fault contributing to the collision. It is true that her master testifies that if he had observed the long whistle of the *Eldorado*, while he was slowed up for the *Peene* to pass ahead of him, he would not have gone ahead full speed, but would have waited to let the *Eldorado* also go ahead of him. This, however, would have been a voluntary concession. It was not obligatory. But he did not observe the *Eldorado's* long whistle, because preoccupied, probably, with the navigation of the *Peene*. The failure to hear the *Eldorado's* whistles was not, however, a contributing cause of the collision; because it did not mislead the *Eldorado*, nor give her the least apparent right to go ahead of the *Florence*. It was practically equivalent to an express dissent; because the *Eldorado* had no right to go ahead without an express assent of the *Florence*. It is evident, moreover, from the testimony, that the *Florence* had already started up before the *Eldorado's* pilothouse had got beyond the shed; for the master of the *Eldorado* makes no mention of any change in the *Florence's* speed, and he was in no way misled by it. When the *Florence* gave the *Eldorado* a signal of one whistle, there was abundant time for the *Eldorado* to keep away by reversing, and the *Florence* had a right to expect her to do so. The *Potomac* being on a hawser, it is doubtful whether the *Florence* could then, by reversing, have kept her tow away from the *Eldorado*. Whether that was so or not, the *Florence* was justified in relying on the duty of the *Eldorado* to avoid the *Florence* by reversing in time, as she might have done, and was bound to do.

Decree dismissing the libel as to the *Florence*, with costs, and against the *Eldorado*, with costs.

DININNY v. MYERS.

(District Court, S. D. New York. April 27, 1895.)

MARINE INSURANCE—COLLISION—DAMAGES—ABANDONMENT—TITLE—BILL OF SALE—DELIVERY IN ESCROW.

Upon a marine insurance of a yacht by a valued policy for \$12,000, the libelant upon an abandonment by him to the insurers, sued as for a total loss, for alleged damages by collision exceeding \$6,000; his title, and his right to abandon were denied. The evidence showed a sale to libelant by the former owner for \$12,500, of which \$5,000 was paid down, and the rest in two notes, and that the bill of sale was delivered to a trustee upon a contract that if either of the notes should not be paid, the money paid should be forfeited, and the yacht, and the bill of sale returned; and the former owner agreed to deliver the yacht seven days after the contract "in perfect order ready for use." The yacht was delivered to the libelant, but not in good order; the first note was paid; the former owner refused to make compensation for the bad condition of the yacht, and before the second note became due sold and indorsed the note "without recourse" to a bona fide purchaser who had no knowledge of the above dealings. *Held* (1) that the trustee was not a trustee of the title, but of the bill of sale only, for the former owner's benefit; (2) that the latter could not have enforced forfeiture, except on nonpayment after he had made compensation for his own default; (3) that by the sale "without recourse," and without reference to the contract, he had waived all further interest in the contract and its conditions; (4) that the libelant was sole owner at the time of the loss, and that the abandonment by him was valid and timely.

This was a libel by Ferral C. Dininny, Jr., against Charles Myers, to recover under a contract of marine insurance as for a total loss upon an abandonment.

Benedict & Benedict, for libelant.
George A. Black, for respondent.

BROWN, District Judge. The general principles contended for by the respondent are undoubted. But they seem to me not properly applicable to the present case. The libelant cannot, indeed, recover for a total loss of his yacht as against the insurers, except upon abandonment; nor can he abandon unless he has such title as authorizes him to abandon.

On the 3d of May previous to the accident he had made a contract for the purchase of the yacht from Mr. Loring for the price of \$12,250, of which \$5,000 was paid down, and the balance was to be paid in two notes, one dated on May 20, 1894, and the other August 20, 1894, the last for \$2,000; and the contract provided that in case of failure in payment of either of these notes the amount or amounts already paid were to be forfeited, and the yacht to be immediately returned to said owner. The owner also agreed to deliver the yacht on the 10th of May following "in perfect order ready for use."

The contract further provided that the bill of sale of the yacht was to be delivered to Thomas Manning, yacht broker, and held by him "in trust until the final payment shall be made, and shall then be delivered to said purchaser, and in case of default in said payment as above mentioned, said bill of sale is then to be returned to said owner and shall be null and void."