

THE EAGLE.

THE THOMAS PURCELL.

WESTERN ASSUR. CO. OF TORONTO v. THE EAGLE et al.

(District Court, S. D. New York. June 6, 1895.)

COLLISION—TUGS AND TOWS—LONG ISLAND SOUND—INATTENTION—LOOKOUT—SIGNALS NOT GIVEN—SHEER DISCREDITED.

The tug P. going east, and the tug E. going west, brought their tows in collision at night, between Throgg's Neck and Stepping Stones, Long Island Sound. The P. had the E. on her starboard bow after passing Throgg's Neck and was bound to keep out of the way; she claimed to have mistaken the E. for a sail vessel, seeing no white lights; but the evidence of the E. showed the white lights properly set and burning; and the night, contrary to the P.'s testimony, was moonlight. *Held*, both in fault for inattention and lack of proper lookout; for not giving signals till within 300 or 400 feet of each other, and the alleged sheer of the P. was discredited.

This was a libel by the Western Assurance Company of Toronto against the steam tugs Eagle and Thomas Purcell, to recover damages for loss occasioned to the cargo of the canal boat McWilliams, through a collision with the Eagle while in tow of the Thomas Purcell.

Stewart & Macklin and Louis B. Adams, for libellant.

Owen, Gray & Sturges, for the Eagle.

Carpenter & Park, for the Thomas Purcell.

BROWN, District Judge. Between half past 12 and 1 o'clock of the morning of July 25, 1894, as the libellant's canal boat McWilliams was going east through the Sound, in tow of the steam tug Thomas Purcell, and on her starboard side, she was brought in collision with the steam tug Eagle, which was going west at a point about midway between Throgg's Neck and Stepping Stones, the stem of the Eagle striking the starboard side of the McWilliams and causing her to sink speedily. The libellant, as insurers of the cargo, having settled for the loss on the cargo, filed the above libel to recoup their damages, alleging negligence in both tugs.

The Eagle had in tow on her port side the disabled steamboat Vulcan, which was not under steam. Both had the regulation side lights burning. The witnesses for the Purcell contend that no staff lights were shown from the Eagle indicating her tow, nor any mast-head light on either the Eagle or the Vulcan to indicate that they were steamers. From the contrary testimony on the part of the Eagle, however, it is probable that the tow lights were set, though it is certainly somewhat remarkable that so many witnesses in behalf of the Purcell saw no tow lights. The evidence of some of the Purcell's witnesses is weakened by their statement that the night was dark, and that the hulls of vessels could be seen but a few hundred feet. The almanac shows that the moon at the time of collision was nearly two hours high; and while that might possibly make the tow lights less sharply visible, it must have afforded the Purcell sufficient opportunity to see that the Eagle and the Vulcan were steamboats long before they were within 300 or 400 feet of each other,

when for the first time any signals were given by either. The boats were on crossing courses, differing about three-quarters of a point from opposite after the Purcell had rounded Throgg's Neck and taken a course of N. N. E., or allowing for an error of about one-quarter of a point, N. by E., three-quarters E.; the Eagle being on a course S. W. by S., half S. Upon these courses the Purcell when from one-quarter to one-half mile distant, saw the Eagle's red light, soon after rounding the red buoy at Throgg's Neck, a little on her starboard bow; and she was bound to keep out of the way of the Eagle, as well as to signal her properly under the inspector's rules. She did neither. Her excuse is, that not seeing any white light to indicate a steamer, she did not know what the two red lights seen might be, and therefore gave no signal at all until after receiving a single blast from the Eagle, when about 300 or 400 feet distant. I cannot accept this as a reasonable or sufficient excuse for not signaling earlier. It must have been seen that the boats were steamers long before this, had any proper attention been given to them; and even if the red light had been that of a sailing vessel, as the Purcell's witnesses say they first supposed, her duty to keep out of the way would have been the same. Nothing effectual was done by her until too late, when the only chance of escape was seen to be to go on as fast as possible, and this was unavailing. The fault of the Purcell was, the lack of suitable care and attention, i. e. a proper lookout, and consequent failure to take any efficient and timely measures to keep out of the way of the red lights admitted to have been seen, as well as the failure to signal when the two red lights ought to have been seen to be steamers' lights.

The fault of the Purcell does not excuse the equally plain fault of the Eagle. Her contention is, that the red light of the Purcell continued to bear about half a point upon her port bow until the vessels had come within about 300 or 400 feet of each other, when the Purcell, it is alleged, made a sheer to the westward across the bow of the Eagle, showing then for the first time her green light; whereupon the Eagle gave a signal of one whistle, which was soon followed by collision. It is evident, however, that no continuous watch was kept by the Eagle after the red light of the Purcell was first seen. No person was stationed as a constant lookout. The sheer of the Purcell, as alleged by the Eagle, is altogether improbable. It is denied by the Purcell, whose course of N. N. E. by her compass, was taken and kept from the time of rounding the buoy at Throgg's Neck. Her story in that regard is consistent and probable, and should be accepted.

I have no doubt that the red light of the Purcell testified to by the Eagle's witnesses was the light seen while the Purcell was rounding the buoy at Throgg's Neck, and before she had taken her compass course of N. N. E.; and that the change from red to green was made as soon as she took that course, which must have been when she was from one-quarter to one-half a mile distant from the Eagle. That no one on the Eagle was watching the Purcell, and did not know just when that change of light from red to green was made, is shown

by the fact that none of them saw the Purcell's green and red lights at the same time, which they must have seen had they been watching, and known when the change was made. It was the duty of the Eagle to keep a proper continuous lookout; to observe in time the change which put the vessels on crossing courses after the Purcell rounded Throgg's Neck, so as to involve danger, and required the rules as regards signals to be observed. Through lack of proper attention in this regard, the Eagle failed to give the signal which she was bound to give under the inspector's rules, and which if given in time, as required, would have corrected the mistake and confusion to which the Purcell's witnesses testify in regard to the Eagle and Vulcan, through not seeing the vertical staff lights, whether they were properly set and burning, or not.

For these reasons, both vessels must be held in fault, and the libellant is entitled to a decree against both vessels, with costs.

THE FLORIDA.

HILLS et al. v. THE FLORIDA.

(District Court, E. D. New York. May 27, 1895.)

SHIPPING—DAMAGE TO CARGO—NEGLIGENCE IN DISCHARGING.

A steamship held liable for damage where bags of filberts, in the course of discharging, were placed so near the coal bunkers that dust from the coal blew upon and through the bags.

This was a libel by John Hills and others against the steamship Florida to recover for damage to certain bags of filberts, constituting part of her cargo.

Carpenter & Park, for libellants.

Convers & Kirlin, for claimants.

BENEDICT, District Judge. This is an action to recover of the steamship Florida for alleged damage to 383 bags of filberts, caused by coal dust upon the filberts. These filberts were part of a consignment shipped from the port of Messina on board the steamship Florida, which arrived in New York about August 5, 1890. Upon their discharge on the dock a large number of the bags were found to be covered with coal dust, and considerably damaged thereby. The allegation of the libel is that the cargo in question was damaged by coal dust from the bunkers of the ship permeating said bags, and damaging their contents, and that the same was caused by negligence and improper attention on the part of the master of the vessel, his agents and servants. Although some point has been made upon the testimony as to the sufficiency of the evidence to show that the filberts in question came by the steamship Florida, the testimony, taken together, leaves no doubt on that point; and it is found that the filberts were transported in the steamship Florida, and that they were damaged by the coal dust, as alleged in the libel. It is true that the evidence shows good stowage of the filberts on board the