upon the imagination of counsel rather than upon the proof. The weight of testimony is to the effect that there is never any dangerous current at this point, and, except when the lock is being filled or a high wind is blowing there is no current which should interfere in the slightest degree with the mooring of a vessel at the south pier.

It was not proven that the lock was being filled at the time of the collision, and, as before stated, there was no wind. How it would be possible for any current which might exist at that point to force a vessel to take the erratic course pursued by the Bulgaria it is not easy to perceive. But it is enough to say that if dangerous currents existed it was the duty of the master of the Bulgaria to know of them and guard against their effects. The Bulgaria has not overcome the presumption arising from her collision with a stationary vessel which was absolutely free from fault. Were it necessary for the court to go further and designate the precise fault of the Bulgaria there would be little hesitation in finding that the collision was due, primarily, to her undue rate of speed. She was carried past her true mooring place and instead of going down the canal she endeavored to rectify her mistake by porting and backing. It was too late. The momentum could not be overcome in the narrow space she had thus left for maneuvering.

Further discussion is unnecessary. Suffice it to say that upon the entire record the court is convinced beyond a doubt that the collision was due solely to the negligence of the Bulgaria. The libelant is entitled to the usual decree.

THE CHATTAHOOCHEE.

HENDRY et al. v. OCEAN STEAMSHIP CO.

(Circuit Court of Appeals, First Circuit. June 12, 1896.)

No. 171.

1. COLLISION—STEAMER AND SAIL—EXCESSIVE SPEED.
   A schooner navigating coast waters, resorted to by the coastwise traffic, and at the same time just on the edge of the route of the Atlantic liners, *held* in fault for going between five and six knots, being substantially her full speed running free, in a fog of such a character that it led to a misunderstanding of signals and courses.
2. SAME—PRESUMPTION—CLEAR FAULT OF ONE VESSEL.
   The rule as to the presumption when one vessel is found in fault by uncontradicted testimony, or is otherwise clearly in fault (The City of New York, 13 Sup. Ct. 211, 147 U. S. 72, and The Oregon, 15 Sup. Ct. 804, 158 U. S. 186), has no application in a case in which the question of fault on each side is for the determination of the court from facts easily ascertainable.
3. SAME—MUTUAL FAULT—APPORTIONMENT OF DAMAGES.
   If, in cases of mutual fault, the damages can ever be apportioned to the different degrees of fault (The Victory, 15 C. C. A. 490, 68 Fed. 395), instead of being equally divided, such rule of apportionment is inapplicable where the fault of each vessel is of precisely the same character, namely, maintaining full speed in a fog, according to the capacity of each for speed.

4. SAME—LIMITATION OF LIABILITY—HARTER ACT—FOREIGN VESSELS.
Quære, whether section 3 of the Harter act (27 Stat. 445) was intended to extend to foreign vessels, although, by its letter, it applies to any vessel "transporting merchandise and property to or from any port in the United States."

5. SAME—MUTUAL FAULT—DIVISION OF DAMAGES—RECOMPENSE OF CARGO DAMAGES.
The Harter act does not apply in a case of collision by mutual fault, whereby one vessel and her cargo are totally lost, so as to prevent the operation of the general admiralty rule, which allows the other vessel, after paying the entire value of the cargo, to recoup one-half of that amount out of the half damages awarded to the owners of the lost vessel. The North Star, 1 Sup. Ct. 41, 106 U. S. 17, and The Manitoba, 7 Sup. Ct. 1158, 122 U. S. 97, applied.

6. SAME—PROTECTION OF SEAMEN BY APPELLATE COURT.
Where one vessel and cargo were totally lost by a collision resulting from mutual fault, and the other vessel, after paying full damages for the lost cargo, was permitted to recoup one-half thereof from the half damages awarded to the owners, officers, and crew of the lost vessel, but the decree was open to the construction that the recoupment was to be pro rata on the sums apportioned to owners, master, and crew, *held* that, in the absence of an assignment of error in respect to the recoupment against the seamen, the appellate court would, of its own motion (seamen being wards of the admiralty), direct that the decree be modified so that the several sums awarded to the mate and crew, who were in no way responsible for the fault of navigation, should be exonerated by, and have priority over, the amounts awarded the owners and master.

Appeal from the District Court of the United States for the District of Massachusetts.

This was a libel in rem by Abram W. Hendry and others, owners, master, and crew of the schooner Golden Rule, against the steamer Chattahoochee (the Ocean Steamship Company, claimant), to recover damages for loss of the schooner, which was sunk in collision with the steamer. The district court found that the collision resulted from mutual fault, and entered a decree for half damages, but also allowing the claimant to recoup from that sum one-half the value of the cargo; the steamer being liable for the full value thereof. From this decree, the libelants have appealed.

Eugene P. Carver (Edward E. Blodgett with him on brief), for appellants.

Chas. T. Russell, for appellee.

Before COLT and PUTNAM, Circuit Judges, and WEBB, District Judge.

PUTNAM, Circuit Judge. We agree with the findings of fact and the conclusions of the district court in this case. This collision occurred about 4 o'clock on the morning of July 20, 1894, south of Nantucket Shoals, between the steamer Chattahoochee, of 1,887 tons register, an enrolled vessel of the United States, bound from Boston to Savannah, and the British topsail schooner Golden Rule, of about 200 tons net register, deeply loaded with a cargo of sugar and molasses, and bound from Porto Rico to Boston. The Chattahoochee left Boston on July 19th, and, the weather being foggy, she decided to go outside, rather than take the regular course