has been struck." The court, at page 22, 106 U. S., and page 41, 1 Sup. Ct., lays down the principle which we have already stated, that, in cases of mutual fault, the assessment of damages is not strictly a setting off of claim against counterclaim, but a mere modification of the usual admiralty rule of the division of them. It uses the following language:

"These authorities conclusively show that according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass, and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden."

The court, also, at page 28, 106 U. S., and page 41, 1 Sup. Ct., illustrates the practical inequity which we have pointed out as inhering in the rule claimed by the Golden Rule, when applied to the case at bar, in that it relieves one vessel by doubling the burden laid on the other. It says:

"It would enable the owners of the Ella Warley to obtain full compensation for a moiety of their loss, whilst the owners of the North Star would have to sustain both their own entire loss and half of that of the owners of the Ella Warley, whilst both vessels were alike to blame for the collision. A rule which leads to such results cannot be a sound one."

The North Star was reaffirmed, in the particulars as to which we have considered it, in The Manitoba, 122 U. S. 97, 110, 111, 7 Sup. Ct. 1158. As the statute limiting liability which those cases had under consideration is admittedly of general application, the question could not arise under it which may under some other circumstances arise under the Harter act; that is, whether the benefits conferred by the latter statute can, under any conditions, be extended to affect the relations existing under the general admiralty law between two vessels in collision. It does, however, on any construction of the statute in issue here, go to the extent of meeting the case at bar, in which there is no decree against the vessel whose cargo suffered, as we have already explained.

In The Stoomvaart Maatschappy Nederland v. Peninsular & Oriental Steam Nav. Co., 7 App. Cas. 795, where the house of lords, in 1882, finally laid down the same rule as was determined in The North Star, the lord chancellor, at page 801, said:

"The question is whether there are, in these cases, two cross liabilities in damages, of each shipowner to the other for half the loss which that other has sustained, or only one liability, for a moiety of the difference of the aggregate loss beyond the point of equality."

This question the house answered, as did the supreme court, to the effect that there was in substance "only one liability." Lord Blackburn, at page 819, noticed the inequity flowing from a different answer as we have noticed it, saying:

"This rule [meaning the general admiralty rule of the division of damages] has been stigmatized as 'judicium rusticorum,' and is justified on the ground of general expediency, avoiding interminable litigation at the cost of some inevitable injustice in particular cases. But if the recompense in damages, which the one ship is to make to the other, is to be considered as quite a distinct thing from that which the other is to make to it, this injustice is increased in a manner which is not only not inevitable, but which, as it seems to me, it requires some subtle and technical reasoning to bring about."

We need not, on this part of the case, note the English decisions further, some of which are referred to in Mars. Mar. Coll. (3d Ed.) 138 et seq., and 179. The compulsory pilotage cases are not in point, as the ships on which the pilots were employed were wholly relieved, and the pilots alone were liable. On the whole, we are clear the Harter act affords no ground for any assignment of error in this case.

The entire amount awarded by the decree of the district court to the owners of the Golden Rule, the master, and the other persons serving aboard her will pay only a small percentage of the total sums adjudged to have been their losses. That decree is open to the construction that the various sums worked into this amount are subject to recoupment pro rata. No assignment of error has been made on this account; but, as seamen are the wards of the court in admiralty, we feel justified in noticing this matter of our own motion. The award for each was one-half of the total damages suffered. We make no suggestion with reference to the division of loss in this particular so far as it affects the mate and crew; but inasmuch as we find that as between the Golden Rule and her master, on the one side, and the mate and the crew, on the other, neither the mate nor any of the crew were responsible for any fault in her navigation, we direct that the decree below be so far modified that the several sums awarded the mate and the crew shall be exonerated by, and shall have priority over, the amounts awarded the owners and master.

The decree of the district court must be modified with reference to the matter of distribution between the owners and master of the Golden Rule, on the one side, and her mate and crew, on the other, in accordance with our opinion filed this day; and, with this exception, it is affirmed without interest. The appellee is adjudged its costs in this court; and the case is remanded to the district court for proceedings in accordance with this order.

TOWBOAT NO. 1, NORFOLK & WESTERN.

THE BERKSHIRE.

MERCHANTS' & MINERS' TRANSP. CO. v. NORFOLK & W. R. CO.

(Circuit Court of Appeals, First Circuit. June 23, 1896.)

Nos. 160, 161.

1. COLLISION IN CHANNEL—STEAMER WITH TOW—EXCESSIVE SPEED.

A steamer of over 2,000 registered tonnage, descending the narrow channel of the Providence river at between 10 and 11 knots an hour, and colliding with a barge in tow of a tug, *held* in fault (1) for moving too fast in the narrow channel, with vessels about, and a tow of about 650 feet approaching; and (2) for violating Rev. St. § 4233, rule 21, which required her, under such circumstances, to at least "slacken her speed," which she did not do until about a minute before collision. The Josephine B., 7 C. C. A. 495, 58 Fed. 813, approved.