

come owners of the ship in consequence of that event, if an abandonment is made and is justifiable. The common doctrine is that the master is the agent of all concerned in the voyage, and that he becomes, by relation, the agent of the underwriters, whenever an abandonment has been accepted, from the time of the loss to which that abandonment refers, although the abandonment may not have been offered or accepted until months after the event. So that, in the present case, if libellants have finally accepted the abandonment, the act of the master in the sale is to be treated as his act, as the agent of the libellants [the insurer], and not as the agent of owners."

So Mr. Justice Miller, in *Copeland v. Insurance Co.*, Fed. Cas. No. 3,210, discussing the duties of a master in cases of necessity, recognizes the interest of the underwriter after loss has occurred. He uses this language:

"It is well settled that in cases of necessity, happening during the voyage, the master is by law created the agent for the benefit of all concerned. \* \* \* And, when the injury to the property is so great as to justify a sale, he, from necessity, becomes the agent of the underwriters, as well as of the owner, to effect the sale for their benefit."

It would seem from these authorities that the master cannot exercise any right to sell cargo on an interrupted voyage without consulting the owner or the underwriter, if they be within reach; that the underwriter of goods suffering from a peril insured against, and so injured as to be open to abandonment, has such an interest in the property insured as to make the master agent for him, as well as the owner; that a sale made before abandonment will not bind the underwriter, if improperly made, even if the abandonment be made and accepted after the sale. It follows that the underwriter in the present case had the right to be consulted by the master in the disposition of this damaged cotton; that as that right had not yet ripened into a legal title, for want of formal abandonment, it was not enforceable in a court of law; and that, under the circumstances of this case, it was and is enforceable in this court.

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#### THE SARATOGA.

NEW YORK & S. B. F. & S. TRANSP. CO. v. THE SARATOGA.

(District Court, S. D. New York. October 31, 1896.)

**COLLISION—FERRYBOAT AND STEAMER—GOING TO THE LEFT—CONTRARY SIGNALS—NOT STOPPING.**

The ferryboat *W. B.*, coming up the North River and rounding Fort William, bound for the Battery, had the steamer *S.*, coming down the East river, on her starboard hand; the ferryboat gave a signal of two whistles three times, and attempted to go to the left across the bows of the steamer, and starboarded; the steamer heard but one of these signals, and that after the steamer had given a signal of one whistle: *Held* (1) that the ferryboat was in fault for departing without cause from the rule of the road to keep to the right, and for attempting to cross the steamer's bow without an assenting signal; (2) that the steamer was in fault for not reversing until about the moment of collision, in violation of the statutory requirement to stop or reverse when in danger of collision, and also by Inspectors' Rule 3; and that the damages should be divided.

Butler, Notman, Joline & Mynderse, for libellant.  
Cowen, Wing, Putnam & Burlingham, for the Saratoga.

**BROWN, District Judge.** As the ferryboat West Brooklyn, coming from 39th Street, South Brooklyn, to the Battery, at about 1:15 P. M. of June 4, 1895, was rounding Fort William, Governor's Island, and about 300 yards distant therefrom, the ocean bound steamer Saratoga was seen coming down the East River. They soon after came in collision, the stem of the Saratoga striking the starboard side of the ferryboat and doing considerable damage, for which the above libel was filed.

The collision was certainly inexcusable; the weather was clear; the tide slack flood; and no other vessel was sufficiently near to create any material embarrassment to either vessel. The collision was about in the middle of the East River, between the Battery and Governor's Island. The ferryboat on rounding Fort William took a course N. x E., heading for her slip at the battery; the steamer was heading about west, and had the ferryboat about three points on her port bow. The steamer was the privileged vessel, and the ferryboat was bound to keep out of her way. The ferryboat was not so near to her slip as to call for any departure from the rule of the road in order to enable the ferryboat to make her slip without difficulty; in the slack tide she could have reached her slip without trouble, and without material delay by going to the right, as was her duty to do. The ferryboat, however, gave a signal of two blasts three times, indicating that she would go to the left and cross the steamer's bow; whereas the Supervisors' Rules, as well as the Statute, required her in that situation to go to the right, under a signal of one whistle; and nothing prevented her doing so. In accordance with her whistle she starboarded, and changed her heading a point or a point and a half to port. At her first signal she slowed; at her second, stopped; and at her third, reversed. Only one of these signals was heard upon the steamer, and that after the steamer had given a signal of one whistle in conformity with the rule, which it appears was not heard on the ferryboat.

1. I must hold the ferryboat in fault for departing from the rule of the road without sufficient cause; and for starboarding and attempting to cross the Saratoga's course without first receiving an assenting signal. The *E. H. Coffin*, 16 Blatch. 421, Fed. Cas. No. 4,310; The *Clarion*, 27 Fed. 128.

2. The Saratoga must also be held in fault for not sufficiently checking her speed on hearing a signal contrary to her own blast of one whistle, under Supervising Inspectors' Rule 3. I think the weight of evidence is that she did not reverse at all until about the moment of collision; while her log shows that it was from 3 to 4 minutes from the time her engine was stopped until it was reversed. It must have been self-evident for some little time before collision, that the ferryboat,—a large boat some 200 feet long—would be unable to avoid collision, except by some help from the Saratoga. From that moment it was the duty of the Saratoga to reverse under the 18th Rule. I am satisfied that she unreasonably delayed reversal; and for these reasons she must also be held in fault. The damages and costs are divided.

## THE H. F. DIMOCK.

METROPOLITAN S. S. CO. v. VANDERBILT et al.

VANDERBILT v. METROPOLITAN S. S. CO.

(Circuit Court of Appeals, First Circuit. September 16, 1896.)

Nos. 148 and 149.

## 1. COLLISION—NARROW CHANNEL—FOG—EXCESSIVE SPEED.

A steamer passing through a narrow and much-used thoroughfare in a dense fog must slow down to such a speed as is consistent with the safety of other vessels navigating the channel; and, if such speed does not afford sufficient steerage way, she should come to anchor. *The Pennsylvania*, 19 Wall. 125; *The Nacoochee*, 11 Sup. Ct. 122, 137 U. S. 330; *The Martello*, 14 Sup. Ct. 723, 153 U. S. 64, followed.

## 2. SAME—VESSEL AT ANCHOR IN CHANNEL.

If a steamer going at dangerous speed in a narrow channel in a dense fog collides with an anchored vessel, she is not relieved from liability by the fact that the latter was anchored in the channel, having come to anchor because of the fog.

## 3. SAME—STEERAGE WAY.

A steamer which enters a narrow thoroughfare in a dense fog, instead of waiting for the fog to lift, cannot excuse herself for maintaining a dangerous rate of speed therein on the ground that such speed was necessary in order to maintain her steerage way and courses, and that this fact constituted a "special circumstance," within the meaning of article 23 of the international rules.

## 4. SAME—STATUTORY REGULATIONS—JUDGMENT OF MASTER.

Where nonobservance of a statutory regulation by a steamer is the cause of collision, she cannot be excused from liability because her master acted with honest judgment under the circumstances.

## 5. SAME—MEASURE OF DAMAGES—PLEASURE YACHT.

In case of the total loss by collision of an expensive pleasure yacht, for which there is no established market value, the damages should be such as will put the owner peculiarly in the same condition as before the injury; and, in estimating such damages, the original price of the ship, and its condition at the time of the loss, should all be considered. An inquiry of practical value would be, what amount a person of sufficient means, desiring to acquire a yacht of her size and character, might reasonably be expected to be willing to pay for the same rather than incur the cost of a new structure, considering, nevertheless, the inducements to secure the new, by reason of probable improvements and other advantages which the new offers.

## 6. SAME—COSTS.

In a suit to determine the liability of vessels in collision, the court can make no order in respect to the costs incurred in an original proceeding in the supreme court to prohibit the court having cognizance of the collision suit from entertaining jurisdiction thereof, the writ of prohibition having been denied.

## 7. SAME—STIPULATION IN LIMITED LIABILITY PROCEEDINGS.

A vessel owner who, in proceedings for limitation of liability, desires to give a stipulation in lieu of transferring the vessel to a trustee, must pay the taxable costs incident to giving the stipulation, including the expense of making the appraisal.

## 8. SAME.

In limited liability proceedings, the costs arising on every contested issue should fall on the losing party; but the expenses of administration, including the fees and other charges of the officers of the court and of the commissioner, should be paid from the fund, unless and so far as parties have made issues, and as to this exception the owner stands in the same condition as any other party. All such costs of adverse issues should be