

THE TITAN.

LEGG et al. v. THE TITAN et al.

(Circuit Court of Appeals, Second Circuit. February 23, 1897.)

COLLISION—TUGS AND TOWS.

A steamer, with tows lashed to her side, and a tug aiding her on a hawser ahead, after passing up the eastern side of Blackwell's Island, with a flood tide of about five miles an hour, turned to cross the head of the island, to make a landing at Eighty-Sixth street, New York. In so doing, they attempted to cross the bows of a small tug, with two heavy tows, which was coming up the west side of the island, and which failed to hear their first signal. A collision resulted, causing the loss of a tow. *Held*, that the first-mentioned steamer and tug were guilty of contributory fault, in failing to observe that the other tug would be unable to check her tows sufficiently in the strong tide to pass behind them, and in not keeping further away and allowing a wider margin of safety.

Appeal from the District Court of the United States for the Southern District of New York.

Goodrich, Deady & Goodrich, for appellants.

James J. Macklin and Louis B. Adams, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. This is an appeal by the owners of the steam vessels the Titan and the Thomas Hunt from a decree condemning them, together with the steam tug Unit, for the loss of the schooner Isle of Pines and her cargo in consequence of a collision between the schooner and a barge in tow of the Titan and the Hunt. The owner of the Unit has not appealed, and the sole question, therefore, is whether there was contributory fault on the part of the appellants' vessels in causing the collision. The collision took place in the East river in the forenoon of June 19, 1893, in the westerly channel, near the upper end of Blackwell's Island, and opposite Eighty-Sixth street, New York City.

The steam tug Unit, having in tow the schooner Isle of Pines, lashed on her starboard side, and the schooner Ella Frances, lashed on her port side, was proceeding up the westerly channel of the river, between New York City and Blackwell's Island, on a flood tide of about 6 miles an hour, making a speed in addition of about 2 miles an hour. The steamboat Thomas Hunt, with the steam tug Titan ahead, attached to the Hunt by a hawser about 30 fathoms long, the Thomas Hunt having two barges in tow,—the Vanderbilt, lashed on her starboard side, and the Warren, lashed on her port side,—each projecting about 25 feet beyond her stem, were proceeding up the easterly channel of the river, intending to land at Eighty-Sixth street, on the westerly side of the East river. The Hunt, with her fleet, was making a speed of about 10 miles an hour with the tide, which was running in that channel at about 5 miles. Shortly before reaching the upper end of the island the Hunt discovered across the island the Unit and her tow; the latter at the time being nearer the Blackwell's Island shore than the New York shore, nearly opposite Eighty-Fifth street, and not far behind the Hunt. Before turning to cross the head of the island, the Titan

had blown a long whistle, indicating her intention to land at Eighty-Sixth street, but this was not heard by the Unit. After she had turned to cross the river to her landing, and while the Hunt was rounding the head of the island, the Titan blew another whistle to the Unit, indicating her intention to cross the river in front of the Unit. The Unit immediately answered the signal with a single blast of her whistle, and followed this very quickly with alarm whistles, and reversed her engine. The Titan cast off the hawser of the Hunt, and the Hunt reversed her engines; but the bow of the Isle of Pines came in collision with the bow of the Vanderbilt, causing the Isle of Pines to sink. When the alarm signals were given, the Titan was making directly across the river, and had passed or was passing in front of the Unit, and the Unit had headed somewhat to the easterly in the attempt to pass astern of the Hunt.

We are satisfied, upon a careful reading of the proofs, that, when the Titan rounded the head of the island to cross the river, she did not make sufficient allowance for the inability of the Unit to control her tows in the strong tide and reduce her speed sufficiently to pass between the Hunt and the head of the island, and that this was due to the failure of the pilot of the Titan to vigilantly observe the Unit. The Unit was an old and small tug, and both of her tows were deep-laden with cargo, and her power was insufficient to hold her tows against the strong flood tide. If the pilot of the Titan had carefully observed her when he began to shape the course of his vessel to cross her bows, he would have discovered that, incumbered as she was, she could not check her speed efficiently and quickly change her course, and that unless she could she would be unable, within the time required, to pass astern of the Hunt without risk of collision. There was plenty of room for the Titan to allow a larger margin of safety for the maneuver. If the Titan had kept further away in the direction of Mill Rock, as she might have done, all hazard would have been avoided. This would have been more inconvenient for the Titan, but it was obviously the more prudent course. The answering signal from the Unit, given as it was when the risk of collision was so obvious that it was immediately followed by her alarm whistles, had no appreciable effect upon the conduct of the Titan or the Hunt. We agree with the district judge that the attempt by the Titan and the Hunt to cross the bow of the Unit was dangerous and unjustifiable, in the circumstances of the situation.

The decree is affirmed, with interest and costs.

THE MOUNT HOPE.

GARFIELD & PROCTOR COAL CO. v. THE MOUNT HOPE.

(District Court, D. New Hampshire. February 24, 1897.)

No. 302.

1. COLLISION—SCHOONER AND TOW—SPEED IN FOG.

Four and one-half to five miles an hour, in much-frequented waters, during a fog, *held* not immoderate speed for a schooner, which was able by prompt action to avoid actual collision with a tow of unusual length, though she approached so close that the last barge, as an act in extremis, was cut adrift, and ultimately driven ashore and lost.

2. SAME—BARGE CUT ADRIFT IN EXTREMIS AND DRIVEN ON SHORE—PROXIMATE CAUSE.

A barge cut adrift from the rest of her tow in extremis, through fear of collision with a schooner alleged to have been moving at immoderate speed, was lost in the fog, and came to anchor for some three hours. The wind and sea increasing, she got under way with such sails as she had, to seek shelter, but after a time encountered a current which compelled her to anchor again. The wind rose to a gale, her cables parted, and she was driven ashore and lost. *Held*, that the speed of the schooner, even if excessive, was not the proximate cause of the loss, and she was not liable therefor.

This was a libel in rem by the Garfield & Proctor Coal Company against the schooner Mount Hope, to recover for the loss of a barge which was cut adrift through fear of collision with the schooner.

Chas. Theodore Russell, for libelant.
Carver & Blodgett, for defendant.

ALDRICH, District Judge. The Fantee was a coal barge engaged in carrying coal under tow from Southern to Northern ports, and at about half past 7 o'clock in the morning of September 19, 1896, left Vineyard Haven in tow of the steam tug Orion, for Baltimore. The tow consisted of the barges Lone Star, Macauley, and the Fantee, in the order named. At about half past 10 o'clock, when near Gay Head, the weather became thick and foggy, and so continued into the afternoon. There was a strong wind ahead from a southerly direction and some sea running. Each vessel in the tow was secured to the vessel immediately ahead by a hawser something like 160 fathoms in length (that between the Macauley and Fantee was somewhat longer), and the tow altogether was about three-fourths of a mile in length. The schooner Mount Hope (the alleged offending vessel) left Portsmouth, N. H., September 17, 1896, in ballast, bound for Baltimore, Md. On September 18th she came to anchor in Vineyard Sound, and at about 8:30 in the morning of September 19th left Tarpaulin Cove, and proceeded on her voyage in a southerly and westerly direction. At 10:30 she was closehauled on the starboard tack, with her lower sails set and her topsails and staysails furled, and her mechanical fog horn was being regularly sounded, and the wind was about southwest. At about 10:45, and while proceeding outside the sound south of the Vineyard Haven light ship, she heard the fog whistle of a steamer on her port bow. Very soon a dark object loomed up a little ahead, on her starboard bow, and at about the same time another on her port bow. The master of the Mount Hope, act-