(e) For the same reasons, the entry in the Queen's bridge book that she reversed at 2:11 is plainly erroneous. This was but about two minutes after her first signal and the Queen having been previously at half speed, would not have traveled over 600 yards in that interval; so that at 2:11 she would not have reached the Cage buoy; and by no possibility could the Alvena in that short interval have approached so near to her as all the testimony shows that she was at the time of reversal, the highest estimate being one-fourth of a mile; because in order to have come within that distance of the Queen, while the Queen was still east of the Cage buoy, would have required of the Alvena a speed of 20 knots, nearly double her capacity.

12. The entry in the Queen's bridge book of 2:11 as the time of reversal, and the testimony in connection with it, have so important a bearing on the Queen's responsibility for the collision, that I should state the many considerations that lead me to discredit this entry. (1) It is wholly incompatible with most of the other testimony and with other circumstances of most persuasive force. At 2:11 the Alvena was more than two-thirds of a mile away from the Queen, and the two vessels could not possibly have reached each other had the Queen reversed at 2:11. (2) It is incompatible with the place of collision, as otherwise proved; because it allows the Queen but two minutes advance between her first signal and reversing, and she could not possibly have reached the place of collision in that way. I think 2:15 as the time of collision is correct; because it harmonizes with the place of collision, the proved rates of speed of the two vessels, the distance traversed and the time necessary to traverse it. (3) The Queen could not have reversed more than two minutes before collision; if she had done so she would have been moving backwards in the water before collision. Being light, with high bows, and going against a strong N. W. wind, she would have stopped dead from full speed ahead in her minimum time of three minutes. (See master's testimony, pages 462–3). But she was not going at full speed at 2:11, nor more than eight or nine knots; nor did she get stopped at collision. The cut of four feet into the Alvena, and the swinging of her stern to the westward several points from the force of the blow, show that the Queen at collision was going ahead through the water at the rate of two or three knots. As she backed at her utmost capacity, at the rate of 80 revolutions, and as she would come to a stop from full speed ahead under such circumstances in about 3 minutes, it is evident that she could not have occupied over 2 minutes in reducing her speed from about 9 knots to 2 or 3, nor have advanced in that time over 400 or 500 yards. The Normandie, 43 Fed. 159–162, note. (4) The entry itself in the bridge book is of a dubious character. The character of the writing suggests that the original entry was only "2:11 stop"; following this comes "Λ full astern for steamer." The words "full astern" are written quite unlike the word "stop"; the latter is written rudely, as if hurried; the former in a slow, careful hand as if entered subsequently and at leisure. The word "astern" is written in full, while elsewhere

in the book that word is abbreviated. The sign ∧ separates these words from "stop"; and that sign does not elsewhere appear in the book. It is called "and" in the stenographer's notes, but the sign which may be for "and" in other parts of the book is quite unlike this sign. The second officer copied into the scrap log the other entries in the bridge book pertaining to the collision; but he says he omitted the entry of 2:11 and also the preceding entry "2:10 full ahd," although he copied what was immediately before and after those entries. He had previously testified that all that was in the bridge book was copied into the scrap log, that such was the custom, and he gives no reason for omitting these two entries. (6) The master some time afterwards interlined new matter in the bridge book, and also in the scrap log; and in the insertions in the scrap log he did not copy from the bridge book, as the word "stop" after "2:11" in the bridge book is omitted in the scrap log. The master there wrote "2:11 full astern for steamer." (7) This insertion in the scrap log is written over a very evident erasure, which is unexplained; and both officers deny any knowledge of anything previously written there. (8) From the second officer's statement at page 406, it is doubtful whether anything was written in the bridge book at the moment as to those matters, except the hour and minute alone, the rest not being "written up," he says, until afterwards. It is uncertain whether he refers to the single entry of 2:15, or to the other entries also connected with the collision. An entry attended by so many dubious circumstances cannot outweigh so much other persuasive evidence to the contrary.

13. My conclusion, therefore, is that the collsion happened at about 2:15 by the Queen's time, near the center of the Main channel and a little only to the westward of the axis of the Swash channel; that the Queen reversed at about 2:13 when not over 300 yards from the place of collision, and less than a quarter of a mile from the Alvena; and that the Queen had traversed about 1,100 or 1,200 yards, or two-thirds of a statute mile, in the previous interval of about 4 minutes after she gave her first signal, when probably about 150 or 200 yards westerly from the westerly Gedney buoys; and that during this interval the Alvena had been porting from her previous course in the middle of the Swash channel, after passing abreast of buoy S. 2; and that the Queen had starboarded so as to go a little south of the middle line of Bay Side cut.

14. A glance at the chart will show that upon those courses the misunderstanding of signals should have been quickly recognized. The Queen's testimony is that during the interval after the first signals, the Alvena continued upon about the same bearing of two to three points on the Queen's starboard bow until reversal, when, as I find, the vessels were within 400 or 500 yards of each other. This of itself is sufficient to convict the Queen of most unreasonable persistence on a dangerous course, and of failure to observe inspectors' rule 3. The duty rested primarily with the Queen to keep out of the way of the Alvena, because they were heading on crossing courses, and the intent of either was not certainly known

to the other. Neither the danger of collision, nor the duty of the Queen to keep out of the way, was terminated by the mere giving of whistles, nor by the Queen's mere understanding that each was to go to port and thus avoid any crossing of courses. The danger, and that duty, could only be terminated, even apparently, by appropriate, timely and visible maneuvers, such as could be seen to be likely to be effective. Until such maneuvers were apparent, the risk of misunderstanding was upon the Queen, and her duty of vigilance in observing all the rules of navigation was in no way relaxed. By the signal of two blasts, the Alvena was understood to be going out by way of Gedney channel; and by the time the Queen had come abreast of the Cage buoy, and being then at least 200 or 300 yards to the southward of it, the Alvena upon that understanding should have changed her bearing at least two points more off the Queen's starboard bow, and also have visibly changed her course to the eastward. The fact that the bearing off the Queen's bow did not increase, but rather diminished, and that her course was not visibly altered to the eastward, ought to have been conclusive evidence to the Queen when the Cage buoy was abeam and the vessels over two-thirds a mile apart, that there was a misunderstanding, or at least that the Alvena's course was not understood, and that the Queen's signal should be repeated. The Queen's officers say she did repeat it at that time, but for the reasons above stated, I am satisfied that this was not done until much later, when the vessels had approached within less than a quarter of a mile of each other, and the Queen in the interval had herself gone at least a quarter of a mile to the westward of the Cage buoy, all the time gathering full speed. Considerably before this the obligation of inspectors' rule 3 became imperative to reverse in order "to reduce speed immediately to bare steerage way" until all doubt was removed. Still earlier, and when the Cage buoy was abeam, the Queen, as I have said, had sufficient notice of the want of a common understanding, because there had been no obstacle to the Alvena's starboarding immediately upon the exchange of signals; and because any delay by her in going to port was not only creating difficulty and increasing the risk of collision, but was carrying her further to the southward and unnecessarily out of her own direct way to Gedney channel, and was therefore very unnatural navigation. At that time the vessels were each probably about 800 or 900 yards from the place of collision and about 1,400 yards from each other. Had either observed rule 3 at that time, or soon after when within half a mile of each other, plainly the collision would have been avoided. Neither did so. The Queen continued on for about a quarter of a mile further before undertaking to comply with the rule, the bearing of the Alvena off the Queen's starboard bow growing all the time less instead of more, and indicating the close approach of danger; and when the Queen reversed suddenly and at her full capacity of 80 revolutions, at less than a quarter of a mile from the Alvena, collision could not be avoided. The rule was incumbent on both alike, and the delay in attempting to observe it, was at the risk of each. The delay, so far

as I can perceive, was without any justifiable excuse; and I must, therefore, hold the Queen liable for the whole cargo damage, the Alvena not being a party to the suit. The Atlas, 93 U. S. 302. Decree accordingly with costs.

MEMORANDUM DECISIONS.

THE ANDREW BURNHAM. (Circuit Court of Appeals, Second Circuit. October 13, 1896.) Appeal from the District Court of the United States for the Southern District of New York. Goodrich, Deady & Goodrich, for appellants, claimants of the Andrew Burnham. Cowen, Wing, Putnam & Burlingham, for appellees Frank P. Burger and others. Dismissed on consent, pursuant to the twentieth rule.

APPLEGATE v. KILGORE, Judge. (Circuit Court of Appeals, Eighth Circuit. May 3, 1898.) No. 693. In Error to the Court of Appeals of the United States in the Indian Territory. H. B. Lockett, for plaintiff in error. Dismissed for want of prosecution, pursuant to the twenty-second rule.

ARNOLD v. HATCH. (Circuit Court of Appeals, Seventh Circuit. October 24, 1898.) No. 540. In Error to the District Court of the United States for the Northern District of Illinois. K. M. Landis, for plaintiff in error. George A. Dupuy, for defendant in error.

PER CURIAM. This case was before this court at the last term under the title of Hatch v. Heim, 30 C. C. A. 171, 86 Fed. 436, and the judgment was then reversed, and a new trial directed. The case now comes before us upon a writ of error from the judgment entered upon a retrial of the action in favor of the present defendant in error. Error is assigned only upon the instructions of the court. The charge accords fully with the principles declared in our previous decision. The judgment is affirmed.

BATES v. GENERAL ELECTRIC RY. CO. (Circuit Court of Appeals, Seventh Circuit. July 26, 1898.) No. 506. Appeal from the Circuit Court of the United States for the Northern District of Illinois. S. P. McConnell, Horace K. Tenney, and I. K. Boyesen, for appellant. Thomas A. Moran and Chas. H. Aldrich, for appellee. Dismissed per stipulation of counsel.

BLACKBURN v. PORTLAND GOLD-MIN. CO. et al. (Circuit Court of Appeals, Eighth Circuit. May 18, 1898.) No. 1,046. In Error to the Circuit Court of the United States for the District of Colorado. Charles J. Hughes, Jr., for plaintiff in error. C. S. Thomas, W. H. Bryant, and H. H. Lee, for the defendants in error. Dismissed, with costs, for want of jurisdiction, on motion of the defendants in error.

BOCKOVEN v. MAYOR, ETC., OF CITY OF NEW YORK. (Circuit Court of Appeals, Second Circuit. November 21, 1896.) Appeal from the Circuit