further testimony as may be presented, the amount of damages sustained by the respective libelants; the report to show each item of damage allowed.

THE MAURICE B. GROVER.

(Circuit Court of Appeals, Second Circuit. January 25, 1899.)

No. 11.

1. COLLISION—STEAMER AGROUND—CARRYING SAILING LIGHTS.
   Under the navigation rules on the lakes (Act Feb. 8, 1895 [28 Stat. 645] Rules 1, 3), a steamer should not carry sailing lights when aground, and is in fault for a collision resulting from her misleading an approaching vessel by such lights.
2. SAME—SIGNALS.
   A passing steamer, having the right of way, is not in fault for a collision because she failed to give the signal to indicate which side she expected to take, when the other vessel was aground, and her movements could not have been influenced by such signal.[1]
3. SAME—ERROR OF JUDGMENT—ACT IN EXTREMIS.
   One of two passing vessels cannot be held in fault for a collision merely because of an error on the part of her master, where he acted in an emergency, and upon a reasonable judgment, in view of the circumstances as they were presented to him at the time.

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

Norris Morey, for appellant.

Harvey S. Goulder, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. The circumstances of the collision are sufficiently stated in the opinion of Judge Coxe (79 Fed. 378), and we agree substantially in his conclusions of fact. We also agree in the legal conclusions that the Moran was in fault, and the Grover should be exonerated from liability, though not altogether with the reasons assigned in the opinion. The facts, briefly stated, are these: The collision took place in St. Mary's river, opposite the island known as "Sailor's Encampment." The river around the island is shallow, has a rocky bottom, has a current of two miles an hour, and is navigable by vessels of size only in the narrow channel constructed by blasting out the rock. The Moran, bound up the river, ran aground at the westerly side of the channel, below what is known as the "Crib," and lay there, with her stem projecting at right angles with the channel, until about dusk,—a period of about two hours,—until the collision. The channel at that point, for half a mile up the river, and running in a northerly direction, is straight, and then deflects sharply to the west around Sailor's Encampment, and below the crib runs southerly a short distance, and turns again somewhat abruptly to the westward. The Moran's stem projected so far into the channel as to very seriously impede the maneuvers of vessels descending the river in making

[1] As to signals of meeting vessels, see note to The New York, 30 C. C. A. 630.

the turn below the crib. At all times navigation at that point was difficult, and it had become customary in 1895 and 1896 for ascending vessels to lie still below the turn, and wait for the descending vessel to pass. The place where the Moran was grounded was near the location sometimes selected by vessels thus awaiting descending vessels. The Grover, as she rounded the northerly side of Sailor's Encampment, gave the customary whistle at the bend to indicate her approach. Those in charge of her navigation saw the Moran, saw her masthead and red lights, saw that she was stationary, although her propeller was moving, and assumed that she was an awaiting vessel. They did not observe her vigilantly, and devoted themselves to the navigation of their own vessel until they passed a dredge lying in the channel about halfway between the bend and the Moran, and then they gave and maintained vigilant attention to the Moran, and made preparations to pass her. As she approached nearer, her master concluded that he could not pass across the bows of the Moran and make the channel turn with safety to his own vessel. He therefore increased the speed of the Grover, which up to that time had been proceeding very slowly, and, when she was about 300 feet above the Moran, ordered her helm hard a-port, and soon after her engines backed, intending to pass the Moran on the port side, and expecting to see the Moran go ahead under a helm to throw her stern to starboard and out of the way of the Grover. Whether this maneuver would have been successful, if the Moran had been free and had made such a maneuver, is doubtful. She could not assist the Grover, and the latter, though only under sufficient motion to give steerageway, struck the Moran nearly amidships on the port side. We are convinced that the master of the Grover acted upon his best judgment at the time he starboarded the course of his vessel, and the proofs do not satisfy us that she could have passed in front of the Moran's bow, and made the turn in the channel, without risk of running upon the rocks. If those in charge of the Grover had known, or should have known, the Moran to be aground, the Grover would have been in fault for not reversing when or before she got opposite the dredge; and the most serious question in the case is whether they were not negligent in assuming that she was an awaiting vessel. She was lying nearer the crib than awaiting vessels usually did, but vessels had passed near that place before, and the rock upon which she grounded was not generally known to navigators. If the water had not been lower than usual, she probably would not have grounded. The master of the Grover was an experienced navigator, familiar with the locality; and there is not the slightest doubt that he and the others on the Grover, after carefully observing the Moran, continued to think she was an awaiting vessel. They undoubtedly assumed that she was lying further below the crib than she really was, but miscalculations of that sort are not inconsistent with the exercise of reasonable vigilance. Seeing her sailing lights burning, they had a right to suppose she was not aground until the contrary became manifested. Upon a careful reading of the proofs, we conclude that those in charge of the Grover were justified in their assumption that the Moran was an

awaiting vessel, and in relying upon that supposition until it was too late to take any more effective measures for avoiding collision than those which were taken. The Moran was in fault because she was under her sailing lights while aground. The Lorne, 2 Stu. Adm. 177. Rule 3 requires the lights to be carried by steam vessels "when under way," and by rule 1 a vessel is not under way for the purpose of carrying lights, when she is grounded. Act Feb. 8, 1895 (28 Stat. 645), regulating navigation on the Great Lakes and their connecting waters. By carrying her sailing lights, the Moran advertised herself as being under way, and actually misled the Grover.

It is urged that the Grover was in fault for omitting to give the signal prescribed by rule 24 (28 Stat. 649), by which the descending vessel is given the right of way, and required, when two steamers are meeting, to indicate which side she elects to take. This fault is not charged in the libel. It is doubtful whether the rule applies to a case like the present, where one of the vessels is lying still. The failure to give it in this case did not influence, and could not have influenced, the movements of the Moran. Whether the Moran could have given any signal to the Grover to indicate her inability to control her movements we are unable to say. The court below was of the opinion that when she heard the signal given by the Grover, while rounding the bend, she ought to have sounded an alarm signal. The case is not one covered by any formulated rule; and while it may be that such a signal might have led those in charge of the Grover to apprehend that the Moran was not under control, and to take earlier precautions for avoiding her, it is so doubtful whether they would have understood the signal to be meant for them that we are indisposed to treat the omission as a fault contributing to the collision. It is probable that the Grover could have passed across the bow of the Moran and made the turn in the channel safely. Other vessels had done so while the Moran was aground, but at that time she did not obstruct the channel to the same extent, and it does not follow that the Grover could have done so because the others did. The Grover was so heavily laden that she might have failed, although the others succeeded. We cannot resist the conclusion that the master of the Grover acted upon a reasonable judgment, in view of the circumstances as they were presented to him at the time; and, if he made a wrong judgment, it was an error, and not a legal fault. The decree is affirmed, with costs.

THE LYNDHURST et al. (two cases).

(District Court, S. D. New York. March 14, 1899.)

1. COLLISION—TUG AND TOW—LOOKOUT.
   A tug cannot be exonerated from fault for a collision in the night, where she failed to keep a lookout at the bow of the float she was towing, which projected about 100 feet beyond the tug, and it is not shown that the maintenance of such lookout would not have prevented the collision.
2. SAME—LIGHTS.
   A tug, in charge of a tow consisting of a tier of canal boats, which left the tow adrift in the night for upwards of an hour without proper lights at the bow and stern of the outside boats of the tier, as required by the inspectors' rules (rule 11), promulgated under 30 Stat. 102, is in fault for a collision occurring during such time, by which the tow was injured, both on the ground of the abandonment of the tow, and of towing without proper lights on the tow.
3. SAME—LIABILITY OF TOWS.
   The requirement of inspectors' rule 11 (30 Stat. 102), that "barges and canal boats when towed at a hawser, two or more abreast in one tier, shall carry a white light on the bow and a white light on the stern of each of the outside boats," imposes a duty on the tow, as well as on the tug, to see that such lights are maintained, and not only on the outside boats, but on each one in the tier, since the requirement is for the benefit of all; and for a collision resulting when such requirement is not being observed each boat injured should be held in fault.

These were libels, respectively, by John O'Brien and Edward Montgomery against the steam tugs Lyndhurst and Andrew J. White for damages for collision.

James J. Macklin, for libelants.
Cowen, Wing, Putnam & Burlingham, for defendant the Lyndhurst.
Carpenter & Park, for defendant the Andrew J. White.

BROWN, District Judge. I do not see sufficient reason for changing the former decisions in these causes.

1. I cannot relieve the tug White from responsibility for failure to have a lookout at the bow of the float which projected about 100 feet beyond the tug. The man stationed 100 feet more or less, aft on the float nearly abreast of the tug's pilot house, in order to communicate the necessary orders of navigation to the wheelsman on the tug, was the responsible person in charge of the navigation. The authorities are full of cases insisting on the necessity of a lookout, having no other duties to perform, and stationed at the proper place, namely, at or near the front. Had a lookout been so stationed, there is no reason to suppose that this tier of canal boats would not have been observed in time to avoid them, just as they were observed and avoided by the ferry boat below them. The boats were merely drifting with the tide and had no motion through the water. It was not such a night as would have prevented seeing such boats, even without a light, at a sufficient distance to avoid them. As it is impossible for the tug to show that a lookout properly stationed, and without other duties, would not have enabled the tug to have avoided the collision, she must be held in fault. The Pennsylvania, 19 Wall. 137.

2. The tow did not have the lights required by law. By rule 11

of the inspectors' rules promulgated in accordance with the new regulations of 1897 (30 Stat. 102), and approved June 7, 1897, the tow was bound to have a white light at the bow and a white light at the stern of each outside boat of the tier. There was no light at all at the bow, and the light in the cabin, if there was any, was dim. The requirements of the law were not complied with; the omission was evidently material. The tow being in charge of the Lyndhurst, it was the duty of the Lyndhurst not only to see that the proper lights were set on starting, which she did not do, but also by a proper occasional observation of the tow behind, to see that these lights were properly maintained. She was therefore responsible for towing without proper lights on the tow, as well as for the abandonment of the tow for upwards of an hour, left adrift in the stream, unattended and unwatched.

3. The requirement of inspectors' rule 11 that

"Barges and canal boats when towed at a hawser, two or more abreast, in one tier, shall carry a white light on the bow and a white light on the stern of each of the outside boats"

imposes a duty also on the tow to carry lights as specified; and this includes the duty of attention to the lights required to be exhibited so as to keep them in proper condition. In towing upon a hawser, it is not reasonable to hold that the tug alone should attend to and keep up such lights. The men in charge of the boats forming the tier should see to this, and be ready to answer any hails from the tug in that regard, without requiring the tug to stop her towing and come alongside of the tow in order to give any necessary attention to the lights during towage. The latter interpretation of the rule, would be not only an unreasonable burden upon the tug, but sometimes very embarrassing, if not dangerous. The outside boat is, therefore, in fault on this ground. The case is strictly analogous to that of The Raleigh and The Niagara, 44 Fed. 781, in which on appeal, both were held liable under rule 15 D of section 4233, Rev. St.

4. The maintenance of these lights being in the interest and for the benefit of each boat in the tier, and not for the outside boats alone, the duty of attending to these lights by whomsoever on the tow that duty may be performed, is a duty undertaken in behalf of all the adjacent boats in the tier. The rule, in form, imposes the duty upon the tier as a whole, and not on the outside boats alone. I see no reason for confining this duty to the outside boat alone, when the lights and necessary watch are for the benefit of the inside boats as well. The present case shows that all are interested in the performance of this duty. The Le Roy next inside the Drum Major was injured by the transmission of the blow of collision from the latter. One man as a watchman is probably sufficient for a tier, and the common duty should be divided and shared as the boatmen may arrange among themselves. But whoever acts should be deemed acting for all, since it is in the interest of all; and any negligence in that regard should, therefore, be treated as negligence on the part of the boat injured. Each canal boat should, therefore, recover two-thirds of her damage from the other two tugs.

THE CHERUSKIA.

(District Court, S. D. New York. March 8, 1899.)

1. COLLISION—LIGHTS—SHIP NOT UNDER COMMAND.
   Article 4 of the sailing rules, requiring two vertical red lights to be exhibited by a ship when not under command, refers to vessels in some way disabled, and does not apply to a brigantine which was simply moving very slowly in a light wind, though she had not complete steerageway for all maneuvers, but sufficient to keep her course.
2. SAME—EXCESSIVE SPEED IN FOG.
   Where the full speed of a steamer was 10½ or 11 knots, a reduction of from 1 to 1½ knots in a fog still leaves the speed excessive. The reduction, even in a moderate fog, should be at least to two-thirds of full speed.
3. SAME—STEAMSHIP AND SAILING VESSEL—CROSSING OR OVERTAKING—SIGNAL LIGHTS—EVIDENCE CONSIDERED.
   Evidence considered in relation to a collision between the German steamship Cheruskia and the British brigantine R. L. T. at sea, in the evening, during a fog, by which the brigantine was lost, and *held* to show that the steamship alone was in fault as a crossing and not an overtaking vessel, and that no signal lights were required.

This was a libel by Edward E. Hutchings and others against the steamship Cheruskia to recover damages for collision.

Everett P. Wheeler and Charles S. Haight, for claimant.
Eustis, Jones & Govin and Mr. Benedict, for libelants.

BROWN, District Judge. The above libel was filed to recover the damages arising from a collision between the British brigantine R. L. T. going southerly and the German steamship Cheruskia going westerly, which took place to the southward of Nantucket Shoals lightship in a low but not very dense fog on the evening of July 4, 1898, at about 9:15 p. m. The brigantine was struck on her port quarter a little aft of the main rigging by the stem of the steamer within two or three points of a right angle. A large hole was knocked in her side and she speedily careened on her beam ends, turning to port, and being light, she drifted away without sinking, her officers and crew being rescued on the steamer.

The weather was nearly calm, so that the sailing vessel had little motion, though most of her sails were set and closehauled with the wind from W. to W. by S. on her starboard side. The fog was low, and such that lights could be seen about one-fourth of a mile to one-third of a mile distant; while it was clear and bright starlight above. The brigantine was in charge of the mate at the time, the captain being below. The captain's son and another seaman were forward, the latter acting as lookout, the former blowing a mechanical fog horn. A negro seaman was at the wheel. The course as given an hour before was S. by W., but so light was the wind that for more than an hour before collision the helm had been kept hard down, the vessel coming up and falling off, as the seaman testifies, about half a point from time to time. The two high white lights of the steamer were first seen from the brigantine, variously estimated from quarter of a mile to one-half a mile or more distant. The seamen forward estimate the distance at from 800 yards to one-half a mile, and say that immediately afterwards her green light was

seen about abeam on the port side. The mate saw first the white lights and then the colored lights dead abeam, as he says, and estimated to be about 1,500 feet off. About 1½ minutes afterwards, as he estimates, he called the master, who coming at once on deck, saw, as he says, the steamer's green light about three lengths distant, i. e. about 400 feet. This was estimated by him and the mate to be about 2 minutes before collision. The distance at that time was probably about 1,000 feet instead of 400. None of the seamen speak of seeing the red light except the wheelsman, who afterwards said he did not know what he saw. All say that the steamer seemed to come straight towards them from about abeam and without any material change in speed. The captain and mate were thrown down by the shock of collision, and the captain had some ribs broken by the fall.

On board the Cheruskia, running W. ⅛ S., a blast of the brigantine's fog horn was first indistinctly heard, and the wheel was immediately ordered hard aport. A few seconds afterwards her red light was seen about two points on the steamer's starboard bow and the order to slow was given, followed 10 seconds afterwards, as the master says, by the orders to stop and reverse which were received so nearly together that they were entered in the engine room as one order at 9:14 and immediately obeyed, and the order to stop reversing was received at 9:17, which was probably about half a minute after collision. The time of reversing was, therefore, from about 1¾ minutes to 2 minutes before collision. Under her port wheel and while reversing the steamer swung from 3 to 5 points to starboard. The master's statement that she swung 3 points to starboard before reversing, is inconsistent with the other testimony and is probably an error. When the brigantine's red light was first seen it was estimated by the master to have been from 400 to 600 meters distant; by the mate, 400 meters. The maneuvers indicate that it was about a quarter of a mile, and could not have been much more. Soon after the red light was seen the brigantine herself was distinguished. The full speed of the steamer, as she was running before entering the fog, was about 10½ or 11 knots; but at 9:04 p. m. on running into the fog, the order "Attention" i. e. to stand by, was sent to the engine room, which meant a reduction of about 1½ knots in speed by changes in the drafts. But the assistant engineer, who was alone in the engine room at that time, says that on this occasion he made no changes in the draft or any actual reduction in speed, but waited for the next order. The master estimated that the steamer could be stopped from 9 or 10 knots in going 600 feet, but he is mistaken in this supposition. Stopping from full speed in 3½ minutes, she would advance about 550 yards; and from 10 knots speed, at least 400 yards. The steamer was running upon a course heading W. ⅛ S.

For the defense, it is contended that the steamer's speed was not excessive in so light a fog; that her speed had been reduced to 9½ knots and that lights could be seen at an abundant distance to enable her at that speed to avoid other vessels; and that the explanation of the collision is (1) that the steamer was overtaking

the brigantine, coming up from behind the range of her red light, and that the brigantine failed to exhibit a flare-up light or a white light over her stern, as required by new article 10; and (2) that the brigantine was unmanageable from lack of wind, and was not under command, nor making any substantial headway; and should therefore have exhibited 2 vertical red lights visible all around the horizon, as required by article 4.

As to the last point, the testimony of the captain is quite positive. He says that the wind was W. or W. by S.; that there was "quite a breeze at 4 o'clock and we tied up some light sails and tied a reef in the mainsail. It commenced to die out just about sundown." He went below soon after 8 o'clock, and he testifies:

"At that time I suppose she was going about ¾ of a mile an hour, but the wind was dying out all the while."

In answer to the question: "Q. Did you give any order in regard to handling the ship when you came on deck, a few moments before the collision," he answered as follows:

"A. No, we couldn't handle our ship, our ship was unmanageable at that time. We couldn't answer the helm, we could neither way nor steer.

"Q. She couldn't have changed her course if she had wanted to? A. No, I guess not.

"Q. Didn't you know that she didn't have steerageway as soon as you came on deck? A. I knowed that she was unmanageable as soon as I got on deck.

"Q. Before you had asked the question? A. Oh, yes."

The captain's son who was forward blowing the fog horn testifies:

"Q. Did you notice how fast she was going? A. She wasn't going ahead at all, wasn't going not more than a mile an hour, didn't have no steerage on her."

The fact that she did not have proper steerageway is further shown by the testimony that before the watch was changed at 8 o'clock, the helm had been put hard down and was kept down; and Britto, who was at the wheel from 8 o'clock until the collision, testifies on this point as follows:

"Q. How was the wind? A. I couldn't tell you how the wind was; the wheel was down all my watch. We were under short canvas; we did not alter the wheel at all from the time I relieved the man.

"Q. Did you follow the same course or did you change it? A. The wheel was down; she came up half a point and went off half a point. * * * The man said go by the wind. We were going S. S. W. or something like that; * * * followed the same course; it went off half a point and up half a point."

From this it is probable that the vessel was not moving over a mile an hour, as I do not credit the mate's estimate of 2 to 3 knots. Had the steamer been aware of this slow speed she would naturally have kept on without stopping or porting; and having the brigantine 2 points on her starboard bow when nearly ¼ of a mile distant, she would have gone ahead of her by several hundred feet, even without starboarding her wheel.

I do not think the brigantine, however, was "not under command," in the sense of article 4. I understand that article to refer to vessels in some way disabled, so as to be no longer under control. That was not the situation of the brigantine. She was in perfect condition.

She was simply moving very slowly in a light wind. She had not complete steerageway for all maneuvers. She could not change her tack by luffing; but she could do so by wearing around. She was substantially keeping her course and had sufficient steerageway for that purpose, whether making only ¾ of a knot, or from 2 to 3 knots as the mate testifies. I think article 4 is not applicable to such a case.

1. Upon the facts as above found the steamer must be held to blame for this collision, because her speed was not materially reduced from full speed. The testimony of the officers and the entry in the log of reduced speed under the order of "Attention," are based only upon inference from the ordinary practice to reduce speed on that order 1 or 1½ knots. But the assistant engineer's testimony shows that the ordinary practice under that order was in this instance not observed. But even had the ordinary reduction under the order "Attention" been made, I should have been bound under the authorities to hold a speed so near to full speed to be excessive in so considerable a fog as hung upon the water at that time.

At the moment of collision the speed of the Cheruskia must have been greatly reduced or she would have cut off the stern of the brigantine. The officers of the steamer think she was nearly stopped; but the blow was too severe to admit of that conclusion, and the brigantine was turned around towards the port side of the steamer as she backed away. I think she was still moving at the rate of 3½ or 4 knots, to which speed she would naturally be reduced in the 1¾ minutes of actual reversal before collision, advancing during this interval from 300 to 400 yards. Had she been going at even "half speed," i. e. about 7½ knots or about two-thirds of full speed,—as much as is justifiable in moderate fog,—the collision would have been avoided. See The Chattahoochee, 173 U. S. 540, 19 Sup. Ct. 491.

2. The contention that the steamer was overtaking the brigantine and coming up astern of the range of the latter's red light, so that it was incumbent upon the brigantine to exhibit a flare-up light, or a white light from her stern, under article 10, was not set up in the original answer. It was interposed by amendment at the trial. Most of the libelants' testimony had been taken previously, by depositions, at a time when no such defense was raised; and it has therefore in its favor the merit of not being given with any reference to this defense. All the direct testimony on the libelants' part, however, is opposed to such a situation of the two vessels. The libelants' witnesses all speak of seeing the steamer's lights, from the first, either abeam or nearly so. The mate, indeed, testified on the last day of the trial that he observed his own heading to be by compass S. by W. and the steamer's bearing from him to be E. by S. when her lights were seen. This would place her exactly abeam; and this I find would very nearly correspond with the computed position of the steamer when 500 yards distant from him, assuming, as the mate says, that the brigantine's heading was S. by W. and that the steamer swung four points to starboard and pointed at collision, as the weight of testimony indicates, including the steamer's witnesses, two points aft of the brigantine's beam, i. e. two points towards her stern.

From the testimony of the defendant's experts that the brigantine could head within five points of the wind, it is argued that the wind was W. and the consequent heading of the brigantine S. W. by S. With that heading of the brigantine, the steamer would have been astern of the range of the red light when a little less than half a mile distant from it, provided the steamer at collision did not point at all towards the stern of the brigantine.

I find that in order to sustain the claimant's contention that a stern light should have been exhibited by the brigantine, each of the following points must be established: (a) That the steamer's lights were visible at least half a nautical mile distant, since at a less distance, even on defendant's hypothesis, they would not be seen astern of the range of the brigantine's red light, and hence no duty to display a stern light would arise; (b) that the wind was W.; and (c) that the brigantine in so light a wind as then prevailed would head within 5 points of it, so that her actual heading should not be south of S. W. by S.; and (d) that at collision the steamer was not pointing towards the brigantine's stern, but was either at right angles to the brigantine or pointing somewhat towards her stem. A substantial variation from either of the above requirements would vitiate the defendant's hypothesis.

(a) Upon a fair consideration of the evidence, I do not think it can be held that either one of the above conditions is satisfactorily proved. The one most nearly established is probably that the steamer's lights could be seen half a mile; yet this is sustained only by two of the seamen at the bow of the brigantine, who estimated the distance at 800 or 1,000 yards, while the mate estimates the distance as only 500 yards. It is obvious that not much reliance can be placed upon estimates either of the distance, or the time that elapsed until collision, where they are not corroborated by other circumstances.

(b) The precise direction of the wind cannot be determined. The weight of evidence of the brigantine's witnesses is clearly that the wind was somewhat south of W.; while the master, second officer and lookout of the steamer all say that the wind came from the port side of the steamer, which would make it considerably S. of W., the master and second officer saying that it was S. W., which however must be erroneous.

(c) The brigantine's experts say that in a very light wind she would not sail within 5 points of it, but from 5½ to 6 points off. The defendant's experts base their contrary testimony upon the assumption that the yards would be more sharply braced in a very light wind; but there is no evidence that the yards were so sharply braced in this case.

(d) The weight of evidence, as above stated, is that at collision the steamer was heading, at least, 2 points towards the stern of the brigantine. This appears from the testimony and diagrams of the master, second officer, quarter-master and carpenter. With that angle of collision, even had the brigantine been heading S. W. by S., the steamer would have been within the range of the brigantine's red light for considerably above the distance of half a mile before collision, as the backward tracing of her course will show.

Three, at least, of the data necessary in order to sustain the defendant's contention, seem, therefore, to be disproved; and I may add that the angle of collision directed two points towards the brigantine's stern is in another respect incompatible with the defendant's hypothesis that the brigantine was heading S. W. by S.; that upon that heading of the brigantine, the steamer, in order to head 2 points towards the brigantine's stern at collision, must have swung about 6 points from her previous course, and this is about 2 points in excess of what her testimony supports. The fair deduction from the steamer's evidence on this head is, that she swung about 4 points to starboard; and this would give the brigantine's heading as S. by W., if the steamer at collision was heading 2 points aft of abeam.

It should be observed also, that while mere estimates of time and distance may be very erroneous, seamen are able to judge approximately of the bearing of the lights seen from the deck; and the united testimony of all on board the brigantine that the steamer's lights from the first were seen about abeam, should receive fair credence in the absence of any impeaching circumstances. If the lights were seen in fact more than 2 points aft of abeam, they would naturally speak of them as on the quarter, or coming up aft, rather than about abeam. In this case the fact that at the time when their testimony was given no issue had been raised on this subject, makes their testimony less liable to the suspicion of misrepresentation or bias on this point. My own judgment is that the steamer's lights were probably not seen more than about 600 yards distant; and if the curve of the steamer's course in swinging 4 points to starboard while traversing about 1,100 or 1,200 feet, the distance she would naturally travel in making that change, be carried back from the point of collision and from a heading of 2 points aft of the brigantine's beam, and thence further backwards straight on her previous course of W. ¼ S., it will be seen that the lights she would exhibit to the brigantine would not vary half a point from abeam while traversing that 600 yards prior to collision. The consistency of the brigantine's account of the bearing of the lights with the alleged heading of S. by W. and with the angle of collision as established by the steamer's witnesses, and especially with the maneuvering power and previous maneuvers of the steamer, which they could not possibly have understood or foreseen, is very persuasive of its truth in this regard.

I am constrained, therefore, to find the Cheruskia alone to blame for the collision and that the libelants are entitled to a decree with costs.

UNITED STATES v. MARSH.

(Circuit Court of Appeals, Fifth Circuit. March 21, 1899.)

No. 781.

JURISDICTION OF CIRCUIT COURTS—SUITS AGAINST UNITED STATES—EFFECT OF AMENDMENT OF STATUTE.

The effect of the act of June 27, 1898 (30 Stat. 494), amending section 2 of the judiciary act of 1887–88, which gave the circuit and district courts jurisdiction of suits on claims against the United States, by excepting from such jurisdiction cases brought to recover fees, salary, or compensation for official services of officers, was to deprive the circuit and district courts of jurisdiction to further proceed in such cases then pending therein; and a judgment thereafter rendered in such a case will be reversed on appeal, with directions to dismiss.

In Error to the District Court of the United States for the Northern District of Florida.

J. Ward Gurley, for the United States.

F. W. Marsh, in pro. per.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges.

PARDEE, Circuit Judge. This is a suit brought on the 28th day of February, 1898, by Frederick W. Marsh, clerk of the circuit and district courts for the Northern district of Florida, against the United States, to recover certain fees for services rendered as clerk in said courts, which had been disallowed by the accounting officers of the United States. Various proceedings were had therein, culminating on July 11, 1898, in a judgment against the United States for the sum of $292.65, with interest from February 28, 1898. 88 Fed. 879. On the 19th day of November, 1898, the United States sued out a writ of error, removing the case to this court; and the record was filed on November 26, 1898. By a supplemental record it appears that on January 25, 1899, at the same term in which the judgment was rendered, the United States, through its attorney, moved in the district court to vacate and annul the aforesaid judgment because at the date of entry of said judgment the said court had no jurisdiction to hear or determine this suit, nor to enter said judgment on its record, as the jurisdiction of said court to hear and determine causes of the kind had been taken away by the act of congress approved June 27, 1898 (30 Stat. 494), and that on March 6, 1899, the said motion to vacate and annul the judgment for want of jurisdiction was granted, and an order to that effect entered on the minutes of the court. On this state of facts, the case has been submitted in this court.

During this term, in the case of U. S. v. McCrory, 91 Fed. 295, we had occasion to consider the effect of the act of congress approved June 27, 1898, as follows: "Sec. 2. That section two of the act aforesaid, approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto at the end thereof the following: 'The jurisdiction hereby conferred upon the said circuit and district courts shall not extend to cases brought to recover fees, salary or compensation for official services of officers of the United States or brought for such purpose by persons claiming

as such officers or as assignees or legal representatives thereof.'" 30 Stat. 495,—and to hold that, as the act in question took away the jurisdiction of the district court in suits brought by officers for fees, its effect was to defeat the useful exercise of the appellate jurisdiction of this court, and the proper action was to enter an order abating the writ of error. The difference between the Case of McCrory and the present one is that in the former the judgment of the district court was rendered before the passage of the act in question, and in the present case the judgment was rendered after the act was passed. The proceedings had in the district court on the motion to vacate and annul, although at the same term, were had after the case had been removed to this court, and after the district court was for the time being deprived of any jurisdiction in the case which it may have originally had. It is probable that, if the present writ of error should be abated, the proceedings already had in the district court would show an annulment of the judgment; but, for greater certainty in the matter, it is deemed proper, as we have jurisdiction to review the judgment of the district court, to enter a judgment reversing the judgment of the district court rendered on July 11, 1898, and remanding the case, with instructions to dismiss the suit; and it is so ordered.

TRAVIS COUNTY v. KING IRON BRIDGE & MANUFACTURING CO.[1]

(Circuit Court of Appeals, Fifth Circuit. March 14, 1899.)

No. 795.

1. CIRCUIT COURTS OF APPEALS—JURISDICTION TO ISSUE CERTIORARI AS ORIGINAL PROCESS.
   Act Cong. March 3, 1891, § 2, declares that the jurisdiction of the circuit courts of appeals is "appellate," as "limited and established" by the act. Section 11 provides that no appeal or writ of error by which any judgment or decree may be reviewed in said courts shall be taken or sued out, except within six months after the entry of the judgment or decree. Section 12 provides that said courts shall have the powers specified in Rev. St. U. S. § 716, which authorizes the federal courts "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." *Held*, that the circuit courts of appeals cannot issue writs of certiorari as original process. They can review no cause except by an appeal taken or a writ of error sued out as prescribed.
2. JUDGMENTS—FINALITY—EFFECT OF CHANGE IN INTERPRETATION OF LAW.
   A change in the interpretation of a law applicable to a cause prosecuted to judgment does not entitle the party who was cast in the suit by reason of the prior interpretation to reopen the controversy.

This is an application by the county of Travis, Tex., for a writ of certiorari to bring up for review from the United States circuit court for the Western district of Texas the cause of Travis county against the King Iron Bridge & Manufacturing Company, in which suit, on July 13, 1893, a final judgment was rendered by that court against the county of Travis, plaintiff in the cause. The present petition for

[1] Rehearing denied March 28, 1899.