

## THE COLUMBIA.

(Circuit Court of Appeals, Second Circuit. March 1, 1899.)

No. 77.

## COLLISION BETWEEN STEAMBOATS.

The right of a ferryboat to an unobstructed ingress and egress to and from her slip does not absolve her from observing the rules of navigation when out in the river, and free to maneuver.

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

This cause comes here upon appeal from a decree of the District court, Southern district of New York (92 Fed. 936), holding both vessels in fault for a collision between the steam ferryboat Columbia and the steam propeller Eagle in the East river, near the Grand Street Ferry slip on the New York side. The Eagle was condemned for keeping too close to the docks, and for dim lights; the Columbia for inattentive lookout, for not heeding the signal of one whistle given by the propeller, and for not reversing soon enough. The Eagle did not appeal.

Le Roy S. Gove, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The various issues of fact appear to have been most vigorously disputed upon the testimony of many witnesses who were examined in the presence of the district judge; and we do not find sufficient ground for rejecting his finding of fact, that the ferryboat gave a signal of two whistles when at least one-third of the way across from the New York shore, to which the propeller immediately answered with one, and that thereafter the ferryboat navigated in disregard of the propeller's signal, and persisted in the effort to cross her bows, although she (the Columbia) had the Eagle on her starboard hand. The claimant relies upon the numerous decisions sustaining the right of a ferryboat to an unobstructed ingress and egress to and from her slip. For obstructing such ingress the Eagle was condemned; but we concur with the district judge in the conclusion that these authorities do not absolve ferryboats from observing the rules of navigation when they are out in the river, and free to maneuver. However improper it may have been for the Eagle to get between the Columbia and her slip, the latter saw she was there, while she herself was yet at a safe distance (indeed, the district judge finds that, if her lookout had been attentive, she would have discovered this even sooner), and was advised by the Eagle's signal that she meant to stay there. Under these circumstances, we must concur with the district judge that it was improper navigation for the Columbia to keep on without reversing until she was in the very jaws of collision. The decree of the district court is affirmed, with interest and costs.

## THE PAOLI.

(District Court, S. D. New York. November 5, 1897.)

## COLLISION—STEAM AND SAIL—YAWING—LUFFING CLOSE—SHAVING—BOTH VESSELS AT FAULT.

When a tug was a mile from a schooner, going in opposite directions at night, the master of the tug saw the schooner's red light a little on his port bow and changed his course a little to starboard; he kept that course, with the schooner's red light at all times on his port bow, until he was within 400 or 500 feet from it, when the schooner luffed from three to four points across his bow, and was struck by the tug at an angle, between the main and mizzen chains, and sunk immediately. The schooner was without a lookout forward, and the evidence tended to show that she was continually yawing to windward, and that her master had either not seen the tug when he gave the order to luff, or supposed her ahead, or on her port bow. *Held*, that the tug was guilty of negligent navigation in attempting to pass too near to the schooner, and that the schooner was also negligent in not maintaining a proper lookout and in luffing, and that both vessels contributed to the collision, and that the damages should therefore be divided.

In Admiralty. Collision.

Robinson, Biddle & Ward, for libelants.

Cowen, Wing, Putnam & Burlingham, for claimant.

BROWN, District Judge. The above libel was filed to recover for the loss of the three-masted schooner A. E. Rudolph by a collision with the tug Paoli off Cape Cod, a little before 3 o'clock in the morning of May 9, 1897. The weather was clear and dark, but with starlight; the wind, about W. S. W. The vessels were on opposite courses, the schooner sailing nearly due north; the tug, with three barges in tow on long hawsers, going nearly due south. The schooner was struck by the stem of the tug on her starboard side, between her main and mizzen chains, and sank in about one minute in 12 fathoms of water. The master and all the rest of the crew, except the wheelsman, and the steward who was below, were lost. The tug ascribes the disaster to a sharp luff made by the schooner just before collision. The wheelsman of the schooner denies any luff, except about half a point, which he says was partially corrected by putting the wheel hard up with the master's help just before the collision. The libelants in aid of their case have called three witnesses from the schooner Knowles, which is alleged to have been near by. The respondent contends that the Knowles was not at the time in the neighborhood of the disaster.

I do not see any sufficient reason to doubt the near presence of the schooner Knowles as testified to by three of her crew. In one respect their testimony confirms the claimant's contention, namely, that the Rudolph did not keep a steady course to the northward, but was occasionally yawing or luffing. The Knowles, sailing about north, was being overhauled by the Rudolph, which was coming up on a course a little to the eastward of the Knowles and upon her starboard quarter. The men on board of her say the Rudolph was sometimes showing both lights, sometimes the green only, and some-