not have gone more than 200 feet between that time and the collision. Assuming that in going so short a distance, she was able to luff as much as three or four points, a drawing of the curve of her course in making such a change in that distance, will show that she could not have gone more than 50 to 75 feet to the westward of the line of her previous course by such a luff; and yet so small a change in the schooner's position to the westward must have brought the tug from the schooner's port side, where the tug was intending to pass, to the schooner's starboard side where the collision occurred. This shows that the schooner when she luffed must have been less than two points on the tug's port bow. It also shows that the course of the tug must have been in fact directed extremely close to the port side of the schooner, constituting a case of extreme close-shaving, which has been repeatedly condemned as unjustifiable and blamable navigation. It is the duty of the steamer says Waite, C. J., in The Farnley, 8 Fed. 629, 637, "to give a passing vessel a wide berth when it can be done and to run no risks of errors or miscalculations." The same duty was stated by Mr. Justice Grier in Haney v. Packet Co., 23 How. 292; The Virginia Ehrman, 97 U. S. 316. In the case of The Benefactor, 14 Blatchf. 254, 256, Fed. Cas. No. 1,298, a cable's length for a steamer going ten knots an hour was held too close. In The Zodiac, 9 Ben. 171, 176, Fed. Cas. No. 18,217, Blatchford, J., said "starboarding a point was not enough." And see The Laura V. Rose, 28 Fed. 104, 109; The City of St. Augustine, 52 Fed. 237; The Dorian, 68 Fed. 1018; The Chatham, 3 C. C. A. 161, 52 Fed. 396.

From the testimony of the witnesses from the tug and the Knowles, I have no doubt that the schooner was continually working to the westward of her intended course by yawing, as the wind was considerably aft of her beam; and this was sure to result, unless constantly counteracted by a port helm. But the steamer was bound to guard against this well-known liability, by not making any close shave and by keeping away by a reasonably safe margin. A proper attention to the schooner's approach would have shown that the tug was drawing away from her too slowly. It is possible that the master's order to "luff a little" may have been given when he suddenly saw the tug near, and from lack of previous observation erroneously supposed that she was going to the eastward of him. As he was lost, the real explanation is unknown.

If the schooner had previously maintained a proper lookout forward, evidently no such change of course as was caused by this luff would have been made; or if it was induced at the last moment by fear, through the very close approach of the tug, the whole blame might have been put on the latter. But the absence of any previous lookout and the distance of the tug when the schooner luffed, preclude the schooner from receiving this advantage. It is certain, however, that if the tug had kept away at a reasonable distance to the westward, no collision could have occurred.

As both vessels thus contributed to the collision, the damages should be divided, as in the cases above cited.

Decree accordingly.

THE PAOLI.

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

No. 67.

COLLISION—BOTH VESSELS AT FAULT—DAMAGES—DIVISION.

Where the evidence in an action for collision showed that both vessels were in fault, a decree dividing the damages between them was proper.

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

H. Galbraith Ward, for libelants.

Charles C. Burlingham, for claimant.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This is an appeal by both parties from a decree of the district court for the Southern district of New York in a collision case, in which the court held that both vessels were in fault and divided the damages. 92 Fed. 940. The collision occurred off Cape Cod, at about 3 o'clock on the morning of May 9, 1897, between the small schooner, Annie E. Rudolph, laden with a cargo of iron pipe on and under deck, bound to Boston, and sailing nearly due north, and the steam tug Paoli, a powerful vessel, with three barges in tow on long hawsers, bound to South Amboy, and going nearly due south, and provided, as was also each vessel of the tow, with proper lights. The night was dark, with clear starlight, the wind was about W. S. W., and the schooner was on her port tack. She was struck on her starboard side, between her main and mizzen chains, and sank forthwith. The master and the crew, except the wheelsman and the steward, were lost. The libel was filed by the owners of the schooner.

The questions in the case are entirely of fact, and within a narrow compass. The testimony is clearly stated, and is carefully commented upon by the district judge, and need not be repeated here; for we entirely concur in his conclusions, both as to negligence of the tug and of the schooner, although we place less reliance than the district judge apparently did upon the evidence as to the extent of the schooner's luff, which was derived from her heading after she sank. The decree of the district court is affirmed, but, as both parties appealed, without interest or costs of this court.