In re ROGERS et al.

THE MAGENTA.

THE NIAGARA (four cases).

(District Court, S. D. New York. March 22, 1899.)

COLLISION—VESSEL OVERTAKING ASTERN—CONVERGING COURSES.

A tug, while proceeding down North river on a course 1¼ points east of a course straight down stream, at the rate of six knots per hour, was struck and capsized by a steamer proceeding straight down the river from behind, going at a speed of 12 knots. No signals were given by the steamer until she was but 800 feet astern of the tug, when she blew two whistles, but these were neither heard nor answered by the tug. The steamer made no change of her wheel until she was so near the tug that a collision was imminent. *Held*, that the tug under the rules then existing was under no obligation to notice or to answer the steamer's whistle astern, and that the latter was responsible for the collision in attempting to pass so near, in view of the converging courses of the two vessels.

In Admiralty. Collision.

Carpenter & Park, for petitioners and the Niagara.
Hyland & Zabriskie and Mr. Hough, for the Magenta.
Foley & Wray, for other damage claimants.

BROWN, District Judge. The above libels grow out of a collision which occurred about in the middle of the North river, off Dey street, about 3 o'clock in the afternoon of October 16, 1896, in clear weather, between the small steam tug Niagara, 58 feet long, and the freight and passenger steamer Magenta, 210 feet long, which overtook and ran into the port quarter of the Niagara and capsized her, causing the death by drowning of four persons on board, for whose representatives the last four libels were filed. The second libel was to recover for the loss of the Niagara, and the first libel was for a limitation of liability of the owners of the Niagara in case they should be held in fault, which the petition denies. The owners of the Magenta and the other damage claimants answer the petition, alleging the fault of the Niagara and their losses thereby.

At the time of collision, the tide was flood and the wind light. The Niagara was coming down river unincumbered and bound from pier 9, Hoboken, to pier 6, East river, and as the evidence shows, she was heading somewhat towards the New York shore, i. e., a little off pier 1, North river, and towards Governor's Island. The Magenta makes daily trips between New York and Keyport, and had left her slip, near Gansevoort street, and was coming down nearly in mid-river. The Magenta was going at the rate of at least 12 knots by land, the Niagara at about 6. When the Magenta was above Chambers street and the Niagara several streets below Chambers and some 200 feet to the westward of the Magenta's course, the Niagara received a signal of one whistle from the ferryboat Cincinnati, then at least a quarter of a mile distant, which was crossing the river from the Pennsylvania Railroad slip, Jersey City, to Cortlandt street, New York. An answer

of one whistle was given by the Niagara and also by the Magenta; and the ferryboat crossed the line of the Niagara's course about 200 feet ahead of her. From the distance traversed by the ferryboat before this collision, viz. from 500 to 700 yards, it is evident that these whistles were given from 1½ to 2 minutes before collision, and that the Magenta at that time must have been at least 800 feet astern of the Niagara, as she was gaining on her at the rate of 600 feet per minute, except in her retard just before collision. She was then also from 150 to 200 feet to the eastward of her and perhaps more. The witnesses for the Magenta testify that as soon as the Cincinnati had crossed the bows of the Niagara, the Magenta gave the Niagara a signal of two whistles, indicating that she intended to pass her to the eastward on her port side, and then slowed; and that getting no answer, she repeated the signal when very near, and reversed, getting 1½ turns before collision. These whistles, if given, were not noticed on the Niagara and they were not answered. The Niagara was struck about 10 feet from her stern and a hole cut in her side. The Magenta's stem was carried away to port.

There is no question but that the Magenta, as the overtaking vessel, was bound to keep away from the Niagara, and to keep away by a reasonable margin in proportion to her high speed. The Magenta's contention is that the vessels were moving upon parallel courses until a few moments before collision, when the Niagara, as the Magenta contends, sheered several points to port, making collision unavoidable, and turning so much as to make the collision nearly at right angles.

In the considerable evidence taken, there is the usual conflict as respects details. My conclusion, however, upon the whole testimony is, that the Magenta's contention is not established; that the Niagara made no such sheer as alleged, and did not turn nearly at right angles except through the Magenta's blow. The evidence of the Magenta's own witnesses shows that the Magenta was not heading at all to the eastward of a course straight down river, but a little, if anything, to the westward of that course; and abundant testimony for the Niagara shows that her course was at least one point to the eastward of straight down river and that there was no sheer on her part before collision. Their courses were closing in, therefore, by a little over a point; and this furnishes sufficient explanation of the collision without resorting to the very improbable hypothesis of a sheer by the Niagara to the eastward, for which there was no call and no reason. I have no doubt that the supposed sheer of the Niagara before collision, has no other basis than the inference drawn from the evident rapid sideway approach of the two vessels from the time when the Magenta drew up near to the Niagara. But this, as I have said, is sufficiently explained by the difference in their courses. A convergence of one point and a quarter would bring the Magenta one foot nearer the Niagara's line with every four feet of her own gain upon her; so that the whole estimated eastward separation of their courses of 150 or even 200 feet at the first two whistles, would

therefore be covered while the Magenta gained about 600 or 800 feet on the Niagara, which, allowing for some diminution of the Magenta's speed, would have occupied less than two minutes while advancing about 1,500 feet from above Chambers street to the place of collision off Dey street.

No reliance can be placed on the general statements of several of the witnesses that the two boats were going down on parallel courses. Seen at a little distance they would present that appearance, and accurate observation alone could distinguish the precise direction of each. There is no indication of any such precise observation, and several of the witnesses who testify, were not in a position to be able to tell within a point or two the direction of either vessel. The Niagara from a point a few hundred feet off Pavonia Ferry, laid her course for a little off pier 1; that was her natural course; it would make her head at least 1¼ points to the east of a course straight down river and it would bring her about in mid-river at the place of collision. I have no doubt upon the testimony that she preserved that course, and that the Magenta saw and knew that their courses were converging. Her officers must have seen some time before that she was working across from the Hoboken side, unless there was gross inattention as to where the Niagara came from, until very near, which I do not believe. The Magenta took no proper or timely steps to avoid collision. Her signals of two whistles, which were not heard either on the Niagara or on the Cincinnati, if given as alleged, were given not over 20 and 15 seconds respectively prior to collision. If as her officers say she made no change of her wheel, and expected the Niagara to get out of her way upon giving these signals, such signals were too late. The Niagara was not under any obligation to get out of her way, and would not have been had these alleged whistles been noticed. Under the rules then existing, the Niagara was under no obligation to notice or to answer those whistles astern of her, but only danger signals, when danger of collision arose; and her failure to hear and answer made no difference whatever in the duty of the Magenta to keep out of the way, or in the proper mode of doing so. When aware of the Magenta's near presence, the Niagara hooked up strong; that was all she could do.

Persuaded that the Niagara neither made any attempt to cross the bow of the Magenta, nor crowded upon her course, but that the Niagara held her own course without any substantial variation, and owed to the Magenta no other duty than that, I must find that the attempt of the Magenta to pass so near to the Niagara, whether her course was in fact laid so as to pass to the eastward or to the westward of her, was at the Magenta's own risk; and that the Magenta was solely to blame for the collision.

Decrees accordingly.

STRONG v. UNITED STATES.

(Circuit Court, D. Connecticut. April 5, 1899.)

No. 897.

COURTS—ACT DECREASING JURISDICTION—EFFECT ON PENDING CASES.

Act June 27, 1898, repealing so much of Act March 3, 1887, § 2, as conferred on the district court concurrent jurisdiction with the court of claims of actions by United States officers for compensation, and providing that no person shall recover in the court of claims for such compensation who has not complied with Act July 31, 1894, requiring monthly and quarterly accounts of officers to be sent to the proper authority at Washington within 10 and 20 days, respectively, after the expiration of the period to which they relate, does not, though containing no saving clause as to pending suits, apply to such suits.

Lewis E. Stanton, for plaintiff.
Charles W. Comstock, for the United States.

TOWNSEND, District Judge. Motion to dismiss. On August 18, 1890, the plaintiff was appointed a marshal of the United States for the district of Connecticut, which office he held until August 28, 1894. On September 3, 1896, he brought suit against the government of the United States in this court by virtue of the provisions of section 2 of the act of March 3, 1887, which suit is still pending. The provisions of said section are as follows:

"Sec. 2. That the district court of the United States shall have concurrent jurisdiction with the court of claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit court of the United States shall have such concurrent jurisdiction in all cases where the amount of such claims exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury."

On June 27, 1898 (30 Stat. 494, c. 503), said section was 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 purposes by persons claiming as such officers or as assignees or legal representatives thereof."

Counsel for the United States moves to dismiss this action on the ground that by said amendment so much of said statute as conferred concurrent jurisdiction in such cases with the court of claims was repealed, and contends that the language, "cases brought to recover fees," etc., covers pending cases. Counsel for the plaintiff contends that the jurisdiction of this court in cases pending before it is not affected by said amendment, because said amendment does not operate as a repeal as to pending suits, and that the amendment is to be interpreted as though the language was, "to cases hereafter brought," etc.

This question has not been, so far as I know, judicially determined. As counsel has said, it is a question of great importance. Cases like the one under consideration are now pending in the various district and circuit courts of the United States, brought therein by officers of