

confine ourselves to the testimony of Capt. Harriman, and find the collision took place on the American side of the river, we do not feel bound to condemn the Lansdowne.

Upon receiving the single whistle of the Lansdowne, it was the clear duty of the Clarion to answer at once with one blast of her whistle, and to keep down on the American side of the channel. The Lansdowne was bound to give her room enough for her to pass down between her and the middle ground, and the Clarion was bound to presume that she would do so. Even if the master of the Clarion was afraid he would be crowded too far over upon the American side, he should not have starboarded, but should have stopped, or possibly stopped and reversed. At any rate he should have stopped, and the very worst that would have happened to him would have been to drift ashore on the middle ground, from which he could have been gotten off with little or no loss. In any view of the case, it was a gross fault upon the part of the Clarion to blow two blasts of the whistle and starboard her wheel. In so doing she acted at her peril, and must be held answerable for the consequences. Bearing in mind that the two steamers were approaching each other at a combined speed of 20 miles an hour, and that they must have been less than a mile apart at the time the Lansdowne blew her first signal, the chances of the Clarion crossing the bows of the Lansdowne before the latter reached the intersection of the two courses were very slight. I know of no case in which a vessel has been justified in disregarding a proper signal from an approaching vessel, and proposing a departure from the rule of the road, after such approaching vessel had signified her desire to adhere to it.

In the case of *The Milwaukee*, Brown, Adm. 313, 321, it was held by this court that the burden is upon a vessel claiming a departure from the statutory requirement to prove "(1) that a proposition to depart from the statute was made by her by means of signals prescribed by rule of the supervising inspectors, and in due season for the other vessel to receive the proposition, and act upon it with safety; (2) that the other vessel heard and understood the proposition thus made; (3) that the other vessel accepted the proposition." "These facts," says Judge LONGYEAR, "must be made out by clear and satisfactory proofs. They must not be left to inference. The statute in question is one of vital importance for the protection of life and property upon the waters, and it will not do to hold a party blameless for a departure from its plain provisions upon a plea of an agreement or license to do so, except where such agreement or license is admitted, or is made out beyond all reasonable doubt by clear and satisfactory proof. Where the agreement is denied, and the evidence is conflicting and contradictory, and does not clearly preponderate in favor of such agreement, the statute must govern, and the responsibility of parties must be determined accordingly." I regard this as a sound enunciation of the law upon the subject. In this

case the proposition to depart from the statute is the more excusable from the fact that the Lansdowne had already signified her intention to adhere to it.

We do not wish to be understood as extenuating in any degree the obvious fault of the Lansdowne in sailing without a lookout. We have no doubt that, having regard to the number of vessels in the Detroit river, to the valuable lives that the Lansdowne had on board, to her great size and speed, and the tremendous energy with which she moved, that it was grossly careless for her to navigate without a lookout, and we should promptly condemn her in this case did we find that this contributed to the collision; but we think that in her management, in the course she took, in the signals she gave to her wheel, to her engineer, and to the approaching vessel, she was guilty of no fault. She appears, too, to have sighted the Clarion as soon as she left her slip. In this connection I call attention to the language of Judge WOODRUFF in the case of *The Comet*, 9 Blatchf. 329, in which he says that where one vessel has been guilty of a clear fault, there should also be clear evidence of a contributing fault on the part of the other vessel in order to divide the damages. "It should not be enough that they make the care and skill and good management of the other vessel doubtful." We are unable to put our finger upon any fault committed by the Lansdowne, aside from the technical one of being insufficiently manned.

There must be a decree for the libellant, and a reference to a commissioner to assess the damages.

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### BORLAND v. ZITTOSEN and others.<sup>1</sup>

(*District Court, S. D. New York. March 30, 1886.*)

#### 1. SHIPS AND SHIPPING—SUPPLIES—PAYMENT—PART OWNER'S NOTE—DISCHARGE OF OTHER OWNERS.

Supplies were furnished to a vessel by one B., who received on account of it the four-months note of Z., the ship's husband and a part owner. Z. subsequently became insolvent. The note was protested, and this action was brought by B. against all the owners for the value of the supplies. It appeared that B., in so taking the note, did the best he could to obtain payment. *Held*, that such taking of Z.'s note by B. was not a discharge of the other part owners.

#### 2. SAME — EQUITABLE ESTOPPEL—EVIDENCE—ADMISSIONS, UNSATISFACTORY NATURE OF.

The master of the vessel, previous to remitting several sums of money to Z., had caused inquiries to be made of B. as to whether his bill for supplies had been paid. After B.'s death several witnesses testified that B. had admitted that it had been paid or settled by Z., and the captain made several remittances to Z., as managing owner. Z. was, however, a creditor of the ship and of the other owners on joint account, to a much larger amount than the amount of the remittances thus sent him. It was contended that this admis-

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.