

vious signal of two blasts, when the latter was out of the slip, or partly out of it, did not of itself change any of the legal obligations of the Greenpoint, nor shift the burden of keeping out of the way, under the old rules of navigation relating to harbors; nor did it relieve the Grand Republic of her duty to keep out of the way by her own maneuvers alone, nor guaranty the success of her maneuvers. *City of Hartford*, 11 Blatchf. 72; *The Garden City*, 19 Fed. Rep. 529, 531; *The Garlick*, 20 Fed. Rep. 649; *The Payne*, Id. 650. The inspector's rules as to whistles do not repeal or supersede the rules of navigation enacted by congress, and do not purport to do so. Article 19 of the new International Rules is not applicable to harbors in merely local navigation. See Act of March 3, 1885, preamble and section 2.

4. The only duties of the Greenpoint were, *first*, to keep her course; and, *second*, to do what she could to avoid collision when the danger of it became apparent. The latter duty is precisely the same, whether the previous assenting signals were of one blast or of two blasts. *The Nereus*, 23 Fed. Rep. 456.

5. I cannot find, upon the proofs, any satisfactory evidence of fault in the Greenpoint. She could not tell precisely what the Grand Republic was able to do in her maneuvers. As soon, I think, as the danger of collision was apparent, the Greenpoint stopped and reversed. She did so as soon, I think, as could reasonably have been judged necessary, considering what the Grand Republic at first would be presumed able to do. For a certain time the Greenpoint had a right to rely upon the ability of the Grand Republic to do what she undertook to do, viz., go ahead without injury to the Greenpoint. Per BETTS, J., *The Argus*, Olcott, 313; *The Baltic*, 2 Ben. 98; *The Ulster*, 1 Mar. L. Cas. 234; *The Servia*, 30 Fed. Rep. 502.

The Greenpoint stopped very soon, if not at once, after the first signal of two whistles, and in a few seconds afterwards she reversed. This was, I think, all that was reasonably required of the tug, her captain not at first knowing just what the Greenpoint could do in turning. Her porting at the last was a wise maneuver, and evidently prevented greater damage.

The libel must be dismissed, with costs.

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#### THE GRATITUDE.<sup>1</sup>

THE HENRY PRESTON, Sr.

HART v. THE GRATITUDE and another.

(District Court, S. D. New York. April 14, 1887.)

**COLLISION—VESSELS IN TOW—HIGH WIND—UNMANAGEABLE TOW—IMPROPER MANEUVER.**

The tug G., having started out from a wharf in the East river in a high wind, with a heavy car-float in tow along-side, turned the float partly around before

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

proceeding down stream. In this situation she gave two whistles to the tug P., which was coming down river with libelant's schooner in tow. The G., in consequence of her angling position, found herself unable to back or to go ahead, lest either motion should swing the float against the schooner. Meanwhile the high wind drifted the float into collision with libelant's schooner. *Held*, that the G. was in fault in taking the float out in a wind so far into the river, when she could not control her; that she was further in fault in turning the float only partly around, instead of more nearly down river, and thus getting into a position where she could neither advance nor retreat; and that she was solely in fault for the collision, the other vessels not being able to anticipate the G.'s movements.

In Admiralty.

*Goodrich, Deady & Goodrich*, for libelant.

*Alexander & Ash*, for the Gratitude.

*Wilcox, Adams & Macklin*, for the Preston.

BROWN, J. Shortly after the libelant's schooner, *Joseph W. Fish*, in tow of the tug *Henry Preston*, had got below the Brooklyn bridge, she came into collision with the bow of a railroad float in tow of the steam-tug *Gratitude*, which struck her upon the starboard side, and inflicted some injury for which this libel was filed. The railroad float had been taken out from the slip at pier 27, East river, to be towed down river. There was a high wind from the westward. The *Gratitude*, having backed the float out into the river, turned the float's bows partly, but not wholly, around, and then made fast on the float's port side. While thus engaged, the *Gratitude* gave a signal of two whistles to the *Preston* before the *Preston* had passed below the bridge, to which the *Preston* replied with two blasts of her whistle, which, as both pilots understood, indicated that the *Preston* should keep ahead, and that the *Gratitude* should go under the stern of the tug and tow. At that time there was at least 300 feet difference in the lines of the courses of the two vessels. The *Preston*, as I am satisfied upon the evidence, starboarded her wheel somewhat, in order to port as much as was safe, having reference to other vessels with tows which were coming up on the Brooklyn side. In this situation it was the duty of the *Gratitude* to keep her float away from the path of the schooner, which was in tow of the *Preston*, on a hawser.

The cause of the collision, I have no doubt, was the very high wind that prevailed from the west, which, striking the large upper works of the car-float, drifted her more rapidly out in the river than was anticipated. It was the duty of the *Gratitude* to provide against this contingency. She had no right to take such a float out into the stream to be blown by the wind in such a thoroughfare against other vessels, or in such a manner that she could not control the float's movements. The *Gratitude* was further specially in fault in that she did not, before making fast, turn the float's bows more nearly down the river. It was wholly in consequence of the float's angling position that, when she was seen to be drifting dangerously near to the line of the schooner's course, the *Gratitude* could neither go ahead nor back, lest in going ahead she should run into the schooner before she could swing to starboard, and by backing should likewise unavoidably swing the float's bows farther to port, and thereby equally endanger the schooner. It was therefore a plain fault of the *Gratitude* to go out in the river and stop, with her float in

that angling situation, where she could neither go ahead nor back, as might be required to avoid other vessels. Neither the Preston nor the schooner could have anticipated these circumstances of the Gratitude and the float. No collision was in fact apprehended by them until the float was nearly upon the schooner. I do not see that any fault was justly chargeable upon the schooner or the Preston, under such circumstances, and a decree must be entered against the Gratitude, and the Preston discharged.

**MCCABE and others v. OLD DOMINION STEAM-SHIP Co.**

(District Court, D. Delaware. June 7, 1887.)

**COLLISION — BETWEEN STEAMER AND SAILING VESSEL — IMMEDIATE SPEED — LOOKOUT.**

A collision occurred a short distance south of the Scotland light-ship, off New Jersey, during a dense fog, between the steam-ship Seneca, outward bound on a S.  $\frac{1}{2}$  W. course, and the schooner William S. McCabe, inward bound on a N. to N.  $\frac{1}{2}$  E. course. The S. was proceeding at the rate of above seven miles an hour, was blowing her fog-whistle every minute, and had a proper lookout forward. The McC. was sailing at a speed of two and one-half or three miles an hour, and had no lookout forward. Her mate stood on the forward part of the poop, about 75 or 80 feet aft from the stem, from which point the view forward was unobstructed, and was engaged in the triple duty of lookout, blowing the fog-horn, at intervals of a minute or minute and a half, and of navigating the vessel. The S.'s fog-whistle was heard on board the McC. three or four minutes prior to the collision, but the latter's fog-horn was not heard on the S. The S. was sighted at from 300 to 400 yards off. The McC. was sighted from the S. about 300 feet away. The S. immediately ported her helm, and stopped and backed her engines. The master of the McC. mistook the course of the S., and starboarded his helm, turning his vessel across the S.'s course. The McC. was struck between the fore-rigging and her starboard cat-head, and sank in a few minutes. *Held*, that the S. was in fault for proceeding at an immoderate speed in a fog; but that the McC. was in fault for not having a properly stationed lookout forward; and that the libelants having failed to prove that the absence of such lookout did not contribute and could not have contributed to the disaster, there must be a decree for only half damages, with costs, for the libelants.

In Admiralty.

*Charles Gibbons, Jr.*, for libelants.

*Owen & Gray, Frank D. Sturgis, and Bates & Harrington*, for respondents.

**WALEs, J.** At five minutes before 6 o'clock, on the morning of the seventh of May, 1885, the three-masted schooner William S. McCabe, while sailing from the Rappahannock river, Virginia, to the port of New York, laden with a full cargo of grain, when about three miles off the New Jersey coast, and a short distance south of the Scotland light-ship, came into collision with the steam-ship Seneca, belonging to the Old Dominion Steam-Ship Company. The schooner was struck somewhere between the fore-rigging and her starboard cat-head, and sank in a few minutes. The McCabe hailed from Wilmington, Delaware; was 105 feet long, and 180 tons register. The Seneca was running on one of its regular trips from New York to Norfolk. She is an iron built ship, 290 feet in length, of 2,700 tons register, and her engine, when fully developed, will run up to 2,200 horse-power. The owners of the schooner