

provide that in transactions like those out of which this case has arisen no compensation shall be allowed the commissioner. My opinion is that he is now entitled to the compensation claimed, which is prescribed by law to be one dollar for each member of the crew so shipped by him. Section 2, act June 19, 1886; 24 St. at Large, 80; section 4612, Rev. St.

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CARLISLE *et al.* v. THE POMONA.

KERR v. THE JOSÉ E. MORÉ.

(*Circuit Court, E. D. New York. July 10, 1888.*)

**COLLISION—BETWEEN STEAM AND SAIL—MISTAKE OF WHEELSMAN.**

As a barkentine and a steamer were approaching, the master of the former ordered the wheel starboarded, which would have carried her further from the course of the steamer. By a mistake of the wheelsman the helm was ported, and the barkentine thus thrown in the course of the steamer. *Held*, that the sailing vessel was alone responsible for the collision.

In Admiralty. On appeal from district court. 34 Fed. Rep. 919.

The libelants John D. Carlisle and others are the owners of the José E. Moré, a vessel 134 feet in length, barkentine rig, and at the time of the collision hereinafter mentioned bound on a voyage from Matanzas, Cuba, to New York, laden with a cargo of sugar, and drawing over 15 feet. Libelant John E. Kerr is the owner of the steam-ship Pomona, a very small iron screw steam-ship of 171 tons, 150 feet long, 21 feet beam, with 11 feet depth of hold. She carried three masts. At the time referred to she was bound on one of her regular voyages from New York to Jamaica. She was fully manned, tackled, and appareled, under command of competent officers, and was in every respect fitted for her business of carrying cargo between New York and Jamaica. The collision occurred between the two vessels a little after half-past 7 o'clock in the evening of December 6, 1885, upon the Atlantic ocean, at a point about eight miles S. S. E. of Barnegat light. The weather was good at the time, the wind was strong from south-west, with a heavy swell from the southward. The regulation lights required by law were carried on both vessels. Each vessel was seen by the other in ample time to have avoided any collision. About 7 P. M. the José E. Moré was heading on a course N. E. by N., having the wind about one point on her port quarter. She carried her inner and outer jibs, foretop-mast, stay-sail, reefed foresail, lower top-sail, reefed upper top-sail, and top-gallant sail, reefed main stay-sail, maintop-mast stay-sail, single reefed mainsail, and double reefed mainsail and double reefed spanker. Her speed was between seven and eight knots an hour. Having four square sails on the foremast, and relatively little canvas aft of her center of rotation, the vessel had tended to go off to the eastward, requiring a lee helm to be carried. She was a quick-steering vessel, provided with a patent dia-

mond screw steering gear, that operated directly upon the rudder-post. The officers of the Moré had flashed a light for a pilot boat, but had not succeeded in getting a pilot. Soon after they saw the mast-head light of the Pomona more than two miles distant, and afterwards her red light, and then only her green light, which was the only side light of the Pomona seen on the Moré for four or five minutes before the collision. These lights were first seen from the top-gallant forecandle, and could be seen by the master and mate aft by leaning over the port quarter rail, and looking outside the port mizzen rigging. Seen in this way, the Pomona's lights first appeared to bear about two points on the Moré's port bow. In reality they were nearer ahead. They continued to draw ahead. No attempt was made, however, by the officers of the barkentine at any time to look for the steamer's lights along the Moré's lee side. The Pomona's lookout and mate also saw both lights of the barkentine when a mile and a half distant. The Pomona then was heading S. by W.  $\frac{1}{2}$  W., and going slowly at a speed of six knots. The barkentine's lights first bore  $1\frac{1}{2}$  points on the Pomona's starboard bow. Other lights of vessels were to the westward of the Pomona's course. Her helm was therefore starboarded to S.  $\frac{1}{2}$  W., and was then steadied. This change of the Pomona was observed by the lookout and mate of the barkentine, and was made when the vessels were about a mile apart. It was sufficient to have enabled the Pomona to keep out of the way of the barkentine, had the latter kept her course, as she was required by law to do. The officers of the Moré supposed the Pomona was a pilot boat, and were not apprehensive of any risk of collision, or mindful of the duty to keep their course in meeting an approaching steamer. Some time after the green side light alone was seen drawing ahead, the chief officer went forward, and called the crew to clew up the foresail. The foresail was then reefed. The object of clewing it up was to be ready to round the barkentine to, so as to take on board the expected pilot, as the Pomona was then crossing the Moré's course to the eastward and leeward. The master of the barkentine had been standing aft on the port quarter. He had not seen the green light of the Pomona, which was ahead, and could not then be seen from aft, under the leach of the foresail. When the Pomona was nearly a quarter of a mile off, and passing the barkentine's course to the eastward, as aforesaid, and while the mate was getting the watch out to take in the foresail, the master of the Moré gave an order to the wheelsman to starboard his wheel. There was nothing at the time to require or justify a change of course by the barkentine. By the misapprehension or disobedience of the wheelsman, the wheel was put hard a-port, and kept so for upwards of a minute, and until the resulting collision ensued. The barkentine answered her patent steering gear very quickly, and swung off immediately four points so as to head about E. by N., when the vessels came together. This sudden, sharp change of course was unexpected on the Pomona. The mate and lookout of the Pomona saw the swing of the barkentine as soon as it happened, by the green light disappearing, and her red light being brought into plainer view. The wheel of the Pomona was put at once hard

a-starboard, and the Pomona answered her helm as much as possible in the brief time remaining, but the two vessels came together nearly at right angles, the Pomona's stem striking and cutting into the barkentine's bowsprit, and twisting her stem to starboard; and the starboard bow of the Pomona was cut into and opened to below the water line. After the first blow, the vessels came together along-side. The Pomona's starboarding her wheel after the barkentine's change of course was the best thing for her officers to do at that time. By any other course the barkentine would have been struck about amid-ships, and probably sunk by the blow. The owner of the Pomona sustained damages by the collision amounting to \$14,002.51.

*Owen & Gray*, for the barkentine.

*Wing, Shoudy & Putnam*, for the Pomona.

BLATCHFORD, Justice, (*after stating the facts as above.*) On the foregoing facts I find the following conclusions of law: *First.* The barkentine was in fault in porting her helm, and thus causing the collision, and the Pomona was not in fault. *Second.* The libelant Kerr is entitled to a decree for \$14,002.51, the amount of damages sustained by him by the collision, with interest on \$10,377.51 thereof from January 1, 1886, and interest on \$3,625 thereof from April 16, 1888, and his costs in the district court, taxed at \$124.80, and his costs in this court, to be taxed. The libel filed by the owners of the José E. Moré should be dismissed, with costs to the claimant of the Pomona in the district court, taxed at \$74.50, and his costs in this court, to be taxed.

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CHAPPELL v. BRADSHAW.

(*Circuit Court, D. Maryland. May 16, 1888.*)

SHIPPING—LIMITING LIABILITY.

A lighter, valued at \$300, drifted from her moorings December 3, 1885, while on fire, and, coming into collision with a schooner owned by B., damaged her \$1,500. The lighter proving a total loss, B. sued C., who owned the lighter, in the state court, and got judgment against him for \$1,500. C. then filed a libel in the federal courts to restrain B. from enforcing his judgment beyond the value of the lighter. *Held*, that the libel should be dismissed; the act of congress of June 19, 1886, (24 U. S. St. p. 80,) extending the limited liability of owners to all vessels, not being retroactive, and the provisions of the act of March 3, 1851, (9 U. S. St. p. 635,) excepting lighters from the limitation of liability therein granted to ship-owners, not being repealed by the act of congress of June 26, 1884, (23 U. S. St. p. 57.)

In Admiralty.

*Fisher, Bruse & Fisher*, for libelant.

*Hammond & Haman*, for respondent.

BOND, J. This is a libel filed by Thomas C. Chappell to have his liability for damage in a cause of collision limited to the extent only of