

way she was seen from the decks of the Wayne, her crew concluded that the Phenix was sailing in a south-westerly direction, her course being a little to the westward of the course of the Wayne; and that she was sailing much faster than the Wayne, and had overtaken the Wayne, and attempted to cross her bows, thereby bringing on the collision. This theory, if sustained by the proof, would of course show the Phenix clearly at fault. She would have had no right, under the circumstances, to attempt to cross the bows of the Wayne. She, according to respondent's testimony, had the wind free as well as the Wayne, and, if she wished to get to the windward of the Wayne, her duty was to have gone under the stern of the Wayne, instead of attempting to cross her bows. The master of the Phenix was a trained seaman, had spent the most of his life as a sailor, and must have known the folly and madness of the attempt he is charged with by the respondent. The only way in which I can in any degree explain the testimony of the witnesses for the Wayne is that they were inattentive in looking out for lights and signals, and when the proximity of the Phenix was discovered on board of the Wayne the wheel of the Wayne was suddenly put to starboard, and her bows swung rapidly to port, so that for an instant preceding the collision, and while the last torch was being shown, the two vessels seemed to be along-side of each other, the port side of the Phenix showing along the starboard side of the Wayne. All the witnesses on the Wayne admit that they had no knowledge or notice of the presence of the Phenix until just at the instant before the collision, when the torch-light was shown from the deck of the Phenix. At that moment, undoubtedly, the position of the two vessels was such as that, if the Wayne's wheel was put to starboard, they might hastily have assumed that the Phenix had approached them from the inside, or was attempting to cross their bows. Therefore, without further attempt to reconcile this contradictory testimony, I simply say that I accept the proof from the Phenix as being the most natural and consistent, and, in the light of that proof, find the Wayne must have been at fault, and liable for the damage incurred.

ELLIOT v. THE STAFFORD.

(District Court, N. D. Illinois. March 14, 1889.)

COLLISION—BETWEEN SAILING VESSELS—FOG-SIGNALS.

The schooner M. was, between 4 and 5 A. M., running close-hauled on the port tack between Cat-Head point and the Manitou islands, Lake Michigan. Her course was about west-south-west, with the wind south by west. There was a dense fog, and two blasts of her fog-horn were sounded at proper intervals. Hearing a single blast of a fog-horn from a schooner, which proved to be the S., over the M.'s starboard bow, the M.'s captain assumed that she was running about south-east, close hauled on the starboard tack, and immediately ported, and went off two points to starboard, when, hearing another single blast about ahead, he ported another point, bringing his course west by north, which he held until the S. was disclosed through the fog running

about east-north-east, and so close that collision was inevitable. The S. claimed that the wind was south-south-east, but the evidence showed that it was from south by west to south-south-west, thus giving the S. the wind free. *Held*, that as by the supplemental rule 12, new sailing rules 1883, a vessel with the wind free is required to sound three blasts on her fog-horn, the S. was at fault in giving an improper signal.

In Admiralty. Libel for collision.
Schwuyler & Kremer, for libellant.
W. H. Condon, for respondent.

BLODGETT, J. The libellant, as owner of the schooner *Morning Star*, seeks to recover damages sustained by his schooner from a collision with the *Stafford* on the waters of Lake Michigan. It appears from the pleadings and proofs that the *Morning Star*, bound on a voyage from Torch Lake to Chicago, with a cargo of cedar, was, between 4 and 5 o'clock in the morning of May 24, 1887, running close-hauled on the port tack between Cat-Head point and the Manitou islands. Her course was about west-south-west, with the wind south by west. There was a dense fog, and two blasts of her fog-horn were being regularly sounded at intervals not to exceed two minutes, when one blast of a fog-horn from a schooner, which proved to be the *Stafford*, was heard over the starboard bow of the *Morning Star*. Her captain, who was officer of the deck at the time, hearing the single-blast signal from the *Stafford*, assumed that she was running about south-east, close-hauled on the starboard tack, and at once ordered his wheel put to port, and went off two points to starboard, when he got the *Stafford's* horn—still a single blast—about ahead, when he ported another point, bringing his course west by north, and held this course until the *Stafford* was disclosed through the fog, running about east-north-east, and so close that a collision was then inevitable. The wheel of the *Stafford* was put to port, and the port bow of the *Stafford* struck the port bow of the *Morning Star*, doing the damage complained of.

I think the whole case turns upon the direction of the wind. It is claimed on the part of the *Stafford* that the wind was south-south-east, while a clear preponderance of the proofs from the deck of the *Morning Star*, and from the decks of the schooners *Simmons*, *Starke*, and *Nelson*, that were in the immediate vicinity and hearing of the accident, makes the wind from south by west to south-south-west. All the proof from the *Stafford* and the *Morning Star* makes the course of the *Stafford* from east by north to east-north-east; and with the wind south, or from any point west of south, the *Stafford* must have had the wind free,—that is, she had it from abaft the beam,—as I understand that, when a sailing vessel has the wind a-beam, or abaft the beam, she has the wind free. And all agree that if the *Stafford* had the wind free she should have blown signals of three blasts upon her fog-horn. See Supplemental Rule 12, New Sailing Rules of March 1, 1883. When the master of the *Morning Star* heard the signal of a single blast from the *Stafford's* fog-horn, he had the right to conclude that the *Stafford* was running close-hauled

on the starboard tack, and it was a proper thing for him to put his wheel to port, so as to pass astern of the Stafford, as the Morning Star was on the port tack, and obliged to keep out of the way of the Stafford on the starboard tack, unless he knew the Stafford had the wind free. If the Stafford had been sounding a signal of three blasts, the master of the Morning Star would have understood it was his duty to keep his course, and that it was the duty of the Stafford to keep out of the way, according to rule 17 of the new rules of March 1, 1883; but the master of the Morning Star was misled, and caused to change his course, by the erroneous signal of the Stafford; and while the change of the Morning Star's course may have brought about the collision, such change was made through the fault of the Stafford in not sounding the proper signal required by usage and the sailing rules. A decree for damages may be entered in favor of the libellant.

THE AMERICA.¹

MILLS v. THE AMERICA.

(Circuit Court, S. D. New York. March 18, 1889.)

1. COLLISION—BETWEEN TUGS—CROSSING BOWS.

A tug which, on sighting another tug showing its red light, crosses the latter's bow to the starboard instead of passing port to port, is in fault for a collision occurring thereupon.

2. SAME—DELAY IN REVERSING—EMERGENCY—FAILURE TO CHANGE COURSE.

The tug A., when 300 to 400 yards from the tug T., which showed both lights, blew a single whistle. Getting no response, it slowed, and blew again, still seeing both lights: but the red light then became invisible, and the T. gave two whistles. The A. immediately thereon reversed, and gave the danger signal. The testimony as to the distance of the vessels apart varied from 150 to between 500 and 1,000 feet. A collision occurring, *held*, that the A. was not in fault for not reversing sooner, or in not starboarding her helm when the T. indicated an intention to cross her bow.

In Admiralty. Libel for damages. On appeal from district court. 32 Fed. Rep. 845.

This is an action by the owner of the steam-tug *Talisman* to recover from the steam-tug *America* the damages sustained by a collision between the two tugs on the night of March 5, 1886, in the North river. The *Talisman* left Weehawken at 11:15 p. m., bound for pier 5, N. R., and had passed Castle Point, lying about 400 or 500 yards from the Jersey shore, and heading generally down the river, but angling slightly for the New York shore. The *America* left Jersey City, bound for Thirty-Fifth street, New York. She went up along the Jersey shore about 300 feet or so off the piers, until near the Lackawanna docks, when she sheered

¹ Modifying 32 Fed. Rep. 845.