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Henry Florence Albro
Cornell Law School

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THE STEERING AND SAILING RULES
FOR PREVENTING COLLISIONS AT SEA,
WITH SPECIAL APPLICATION TO SAILING VESSELS.

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by

HENRY FLORENCE ALBRO.

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Ithaca, N. Y.

1893.

THE STEERING AND SAILING RULES
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The Regulations. Many years before the rule of the road at sea became a part of the municipal law of England the practice of seamen had established rules to enable approaching ships to keep clear of each other. These rules, which are the foundation of those now in force, were well established by custom, and formed part of the general maritime law administered by the Admiralty Court. In 1846 the subject was first dealt with by act of Parliament, and since that date the law has been altered or added to by three successive acts of Parliament. The only act now in force is 25 and 26 Vict. c. 63.

These rules adopted by seamen and administered by the court of Admiralty in Eng., were adopted by, and became a part of the law of the U. S. at the period of our becoming an independent nation, (see Peter's Ad. Decisions, 1, p. 112).

The Eng. Merchant Shipping Amendment Act, which took effect on June 1st 1863 was substantially adopted by act of Congress of 1864, and in a case in U. S. Supreme Court, a libel case to recover the loss sustained by a collision in 1867 between the American schooner Berkshire and the British steamer Scotia, it was decided that the British Act, was a part of the Maritime law of nations, (see The Scotia 14 Wall. 170, The Belgenland, 114 U. S. 355). This act became a part of the municipal law of the U. S. by Act of Congress of 3rd of May 1885, and remains the law at the present time (1893). These regulations will be superseded by the Code approved by the Representatives of the maritime nations at the Conference held at Washington in 1889 - 1890, but some time must elapse before the change in the law is effected. For the new "Washington Regulations, which await a proclamation of the President before they take effect, see Supp. to U. S. R. S. Vol. I. p. 781--Aug 19, 1890, ch. 802 Art. 1 - 3. The Washington Regulations, though substantially the same as those now in force, have some points of difference. They increase, rather than diminish the complexity.

The existing regulations are headed "for preventing

collisions at sea", and appear to be expressly binding only on ships at sea were it not expressly stated in the statute that they are to be "followed in the navigation of all public and private vessels of the U. S. upon the high seas and in all coast waters of the U. S. except such as are otherwise provided for." It would probably be held that vessels are required to navigate in accordance with the sea Regulations in rivers and harbors, as well as at sea. (see 29 Fed. Rep'r, 102, 1887; 33 Red. Rep'r, 554; 29 Fed. 98; In Re Garret, 141 U. S. 1, at p. 14).

The safety of navigation requires that these Regulations should be understood by the seamen of different nations in the same sense. Therefore the courts of different nations should construe them uniformly (see opinion of Benedict, J., in 6 Bened. 523; and Brown Ad. 251, 261,-- 1 Otto, 200).

Where no special circumstances exist to make the regulations inapplicable, they furnish the permanent test as to which ship is in fault in every case of collision. Public policy, as well as the best interests

of all concerned, requires that they should be enforced in all cases to which they apply. (21 How. 372, 383, N. Y. and Liv. U. S. Mail S. S. Co. v. Rum-bull).

Great difficulty has been experienced in defining the moment when these Regulations became applicable. To quote from opinion of Justice Clifford, in "The Wenona"; 19 Wall 41, Supreme Ct. "Rules of navigation, such as have been mentioned (as to the duties of two vessels approaching each other), are obligatory upon such vessels when approaching each other, from the time the necessity for precaution begins; and they continue to be applicable as the vessels advance so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to keep her course after the approach is so near that the collision is inevitable and are equally inapplicable to vessels of every description while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision". (see also the Nichols, 7 Wall, 656; the Johnson, 9 Wall 146; the Dexter 23 Wall, 69).

The Washington Regulations state: "Risk of collision can, where circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist."

Uncertainty as to the facts causing a risk of collision often render it difficult to determine the moment at which, and the manner in which, the Regulations are to be applied. In judging of the course and probable movements of a strange vessel, it must be assumed, under ordinary circumstances that she can, and will, comply with the Regulations. (see *The Free State* 1 Otto, 200; *The Milwaukee*, Brown Adm. 313, 331.)

Where two vessels were approaching each other on courses only half a point from being directly opposite, at a joint speed of twelve knots, and distant from each other two or three miles, our U. S. Supreme Court held that there was risk of collision. (see *The Nichols* 7 Wall. 656; and *The Cayuga* 14 Wall 270).

A vessel may not delay to take precautions until the last moment; or trust to being able to "shave clear" of the other. If by so doing she frightens the other into

taking a wrong step, and a collision occurs, she will be responsible for the entire loss. (see The Benefactor, 14 Blatchf., 254; The Nacoochee, 137 U. S. 330).

To be effectual precautions must be taken at the proper time, or they are not a compliance with the regulations, and are no defense. (The Johnson, 9 Wall 146; The Vanderbilt, 6 Wall 225; The Syracuse, 12 Wall 167; The Sunnyside, 1 Otto, 208; The America, 2 Otto, 432).

No alleged practice of seamen of avoiding other ships by taking measures other than, and inconsistent with, those required by the Regulations, is recognized by the law. A defendant cannot be heard to allege such a practice as an excuse for violation of the Regulations. (Clare vs. Providence and S. S. Co., 20 Fed. 535).

"Revised International Rules and Regulations for Preventing Collisions at Sea". (Vol. 23, U. S. Stats. at Large, p. 438).

Article 1. In the following rules every steamship which is under sail and not under steam is to be considered a sailing ship, and every steamship which is under steam whether under sail or not, is to be considered a ship under steam. A steam-tug lying-to under sail, with her engines idle and her fires banked up

is "under steam" within the meaning of Art. 1, and must keep out of the way of a sailing-ship. (see "the Sunny-side", 91 U. S. 208).

Articles 2- 11, are Rules Concerning Lights which are not treated in this thesis.

"Sound Signals for Fog, and so Forth".

Art. 12. A steamship shall be provided with a steam whistle or other efficient sound signals, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn, to be sounded by a bellows or other mechanical means, and also with an efficient bell. (In all cases where the regulations require a bell to be used, a drum will be substituted on Turkish vessels).

A sailing-ship shall be provided with a similar fog-horn and bell.

In mist, fog, or falling snow, whether by day or night, the signals described in the article shall be used as follows, that is to say:

(a) A steamship under way shall make with her steam-whistle or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.

(b) A sailing ship under sail shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(c) A steamship and a sailing ship when not under sail shall, at intervals of not more than two minutes, ring the bell,

Care must be taken that the "prolonged" blasts of Article 12 be distinguished from the "short" blasts of Article 19 used to indicate an alteration of the helm. By the Washington Regulations a prolonged blast is from four to six seconds duration.

A ship is "under way within the meaning of this article when she is not fast to the shore, or to moorings, or held by her anchor, (see *The Sunnyside*, 91 U. S. 208; *The Pennsylvania*, 19 Wall 125). By the Washington Regulations a vessel is "under way" when she is not at anchor or made fast to the shore, or aground."

It is gross negligence for a steamship not to be fitted with a whistle.

"Rapidly for about five seconds." Washington Conference Regulations, Art. 15. (d)

What is fog within the meaning of Art. 12? See "the Monticello", U. S. D. C. Mass., 1867, in which Lowell J. held: "To give the statute a reasonable interpretation we must suppose that its intent is to give to approaching vessels a warning which the fog would otherwise deprive them of. By day there must be fog enough to shut out the view of the sails or hull, or by night of the lights, within the range of a horn, whistle, of bell.

"Speed of Ships to be Moderate in Fog, and so Forth."

Art. 13. Every ship, whether a sailing ship or a steamship, shall in a fog, mist, or falling snow, go at a moderate speed.

It is no excuse for excessive speed that the ship is a mail-ship and under contract to deliver the mail by a certain date (see the Northern Indiana 3 Blatchf. 92), nor that the excessive speed is necessary for steerage way, nor that it was necessary to get out of the fog quicker (see The Hansa 5 Bened. 501, 521; The Chancellor, 4 Bened. 153, 164).

The duty of a steamship under way in a fog was stated by Justice Clifford of U. S. Sup. Ct. as follows:--

"The best precautions are bright signal lights; very

low speed just sufficient to subject the vessel to the command at her helm; competent lookouts properly stationed and vigilant in the performance of their duties; Constant ringing of the bell or blowing of the fog-horn, as the case may be; and sufficient force of the wheel to effect, if necessary, a prompt change in the course of the vessel" (see the *Colorado*, 91 U. S. 672; the *Franconia*, 4 Bened. 181). It was also held that the meaning of the above rule is not that a steamship shall have only such a pressure of steam as will enable her to go slow, but that she shall have her full steam power, and still go slow, so that she may be able to bring herself to a standstill, as soon as possible, (see *The Harza* 5 Bened. 501).

It has been held that a ship in a dense fog is bound to go as slow as she can and still keep steerage-way, (see the *Westphalia* 4 Bened. 404). She is not bound to lie-to (see the *Morning Light*, 2 Wall 550; *The Colorado*, 91 U. S. 692). Sailing-ships are required to use extra caution and to put themselves under moderate sail in a fog (see *The Colorado*).

As to ferry boats, the U. S. Circuit Court held in

"The Exchange", 10 Blatchf. 168, that though they have no exclusive privileges of navigation, still public convenience requires them to be running as constantly as possible, and the rules applicable to them are, that while more than ordinary care and vigilance and caution are required on the ferry-boat, she is entitled to more than ordinary diligence on the part of other vessels to avoid her. (see also The Lydia, 11 Blatchf. 415; and the Hudson, 5 Bened. 206).

"Steering and Sailing Rules."

Art. 14 When two sailing ships are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the others as follows, namely:

(a) A ship which is running free, shall keep out of the way of a ship which is close-hauled.

(b) A ship which is close hauled on the port tack shall keep out of the way of a ship which is close hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.

(e) A ship which has the wind aft shall keep out of the way of the other ship.

The Act of Congress of 1864 required, where two sailing vessels should meet end on, or nearly so, that they should put their helms to port. This was dangerous for a close-hauled vessel, on the starboard tack. It threw the vessel up in the wind and out of command, and often caused imminent risk of collision.

As to what is "risk of collision", see above, p. 4.

The classification of sailing ships above is intended probably, as an exhaustive and not as a cross classification. It seems to fail of being either. The wording is ambiguous. "Running Free" appears to mean as used in the cases, not "close-hauled": but it does not describe a vessel "ramp full", i. e. having the wind a point or two free and forward the beam. A ship in this condition appears to be treated as close hauled by sailors in the trades, but not generally by the courts.

(see *The Clara M. Potter* 3 Ware, 39; see also Am. Dig., 1891 p. 654, Sec. 16). The words "with the wind abaft the beam" occur in Art. 12 (see ante, p. 8, (b)). Can a vessel having the wind aft at the same time be "running free?" And if so, does (d) or (e) prevail. If she is to leeward of the other ship does Art. 14 require her to keep out of the way under (e), or to keep her course under the combined operation of (d) and Art. 22. What is the dividing line between "running free" and Having the wind aft. "Has a ship with the wind on the quarter, say three points from dead aft, got "the wind aft?" For discussion of these questions see *The Privateer*, 9 L. R. Ir. 105, also the *Byfoged Christensen*, 4 App. Cas. 669. In "The Privateer," an Irish case, the Court was of opinion that a ship may be "running free" and have "the wind aft," and it was held that a ship with the wind about two points free was close hauled. (See also, *The Clara M. Potter* 3 Ware 39). This case holds to same effect.

A ship required by the regulations to keep out of the way of another may do so in any she thinks proper. She may go ahead or astern of the other, and she may put her helm to port or starboard, as she thinks best,

(see the *Carröll*, 8 Wall. 302). She has no right to embarrass the other, or to put her into a difficulty. It was held in "The Empire State, 1 Bened. 57, that where two courses are open to a vessel required to keep out of the way, and she chooses the more hazardous, she is responsible for a collision that would not have occurred if she had taken the safer course. Art. 14 is supplemented by, and must be read with, Arts. 20 and 22; the former requires a sailing-ship overtaking another to keep out of the way (see page 25); and the latter requires the overtaking ship to keep her course (see page 31).

A ship hove-to comes under Art. 14 and is a close-haul ship (see the *Ada A. Kennedy*, 33 Fed. Rep'r 623) and is required to keep out of the way notwithstanding her comparatively helpless condition. (See the *Transit*, 3 Bened. 192). In above case a pilot boat lying-to with her helm lashed a-lee, was run into by a schooner with the wind free. The pilot boat was forging ahead at the rate of about a mile an hour as she kept coming to and falling off. Both vessels were held to be in fault for the collision: the schooner for not keeping out of the way of a vessel which was "close hauled", and the

pilot boat for not keeping her course. The Court said that the proper course for those on board the pilot boat to have taken was to get way on her so as to keep a steady course.

Though a ship on the starboard tack generally has the right of way she may not stand on obstinately when it is plainly visible that a continuation of the course will cause a collision. (see 91 U. S. 222, 224; 23 Blatchf. 268; 25 Fed. Rep. 844; 29 Fed. 99--126; 33 Fed. 524). Under rule 23 both are bound to give way and depart from the usual rule when an adherence to that rule would inevitably bring on a collision.

In the *Ann Caroline*, 2 Wall. 538, Compare 5 McLean 622, Newb. Adm. 139, Rev'd 21 Howard 548. Two ships, close-hauled on opposite tacks, were crossing each other. The ship on the starboard tack was held in fault for not keeping out of the way when the other, being ahead and to windward, could not keep off without risk of collision, and could not go about because of a shoal. (See also the *Maggie J. Smith*, 123 U. S. at page 354.

A sloop, with the wind free, was running through a narrow channel, against a strong tide close to the shore. Two schooners, the combined length of which was equal to

to half the breadth of the channel, were beating to windward in the opposite direction. It was held that the sternmost of the schooners was in fault for standing on when under the stern of a leading schooner so that when she was obliged to go about she ran into the sloop, which could not avoid her without going ashore. (see *The Mark Eveline*, 16 Wall. 348).

The duty of a vessel close-hauled on a starboard tack, under Rule 14 is strictly to obey the rule requiring her to keep her course. She can excuse a departure from that rule, only by showing that it was necessary to avoid immediate danger (see *Haight v. Bird* 26 Fed. Rep'r. 539, also the *Khedive*, 5 App. Cas. 876). Keeping her course under Art. 22 means keeping her course by the wind. If in so doing she comes to or keeps off a little she does not thereby infringe Art. 22. (see *The Marmion*, 1 Asp. Mar. Law Cas. 412; *The Animo* and *The Amelia* 2 Asp. Mar. L. Cas. 96). It is an infringement if, alleging that she is close hauled, she comes up as much as two and one half points. (*The Earl Wemyss*, 6 Asp. M. C. 364, 61 Law P. 289; see also *The Ella*

Warner 30 Fed. Rep'r, 203).

Art. 15 is the "end on" rule, applicable to meeting ships under steam. It takes the place of the port-helm rule referred to on page 13 which required sailing vessels meeting "end on" or nearly so, to put their helms to port. Under the existing regulations there is no "end On" rule for sailing vessels. In the existing Regulations vessels approaching each other are described as meeting, crossing, and overtaking or being overtaken. This is meant to include all cases of ships approaching or being approached by others. It is a cross classification, for although no ship that is a "crossing" ship can at the same time come within the rule for "meeting" ships, yet a "crossing" ship may at the same time be an "overtaking" ship. (see the Columbia 10 Wall, 246); see also 33 Fed. Rep. 524, where it is suggested that the line of distinction between "crossing" and "overtaking" ships may be ascertained from the fact as to whether, when the need of precaution arises, (from the fact of their converging courses,) one ship bears two points or more abaft the beam of the other. This is the Eng. rule as decided in the Franconia 2 P. D. 8, 12 and see also

the Main 11 P. D. 132, 139, where it is held that the facts which determine whether a vessel is an overtaking vessel are: or does she bear more than two points abaft the beam and is she proceeding at a greater rate of speed than the other. In the Cayuga 14 Wall. 270, 277, it was held that the speed was not an element in the case, and it does not mention the "two-points-abaft-the-beam" line of distinction. But as the line must be drawn somewhere to attach a definite meaning to the words I think the English rule should be followed, as it substantially is, in The Oceanus 5 Bened. 545, The Governor Abbott Ad. 108, the Rhode Island Olcott 505, 1 Blatchf. 363.

Art. 16 applies to ships under steam crossing.

Art. 17. If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.

As to "risk of collision," see p. 4; as to how to "keep out of the way", see p. 14; and as to the duty of the sailing ship to keep her course see Art. 22, p. 31.

The reason for this rule, as given by the authorities, is because steamships are more completely under command

than sailing ships. This rule is not of universal application however but is limited where a tug has a ship in tow. In the *W. C. Redfield* 4 Bened. 226 a schooner was held in fault for not lying in stays to allow a tug with a fleet of barges in tow to pass.

A steam ship hove-to under canvass with her steam up would be held to be "proceeding" within the meaning of Art. 17, and also a sailing ship in a flat calm.

(see *The Sunnyside*, 1 Otto, 208. By Art. 17 the duty of the steamship is the same whatever be the course, situation, wind, or tack of the sailing ship; she must keep out of the way be she meeting, crossing, or overtaking a sailing ship. If she is being overtaken by a sailing ship, it appears that, by the operation of Art. 20 and Art. 22, she is required to keep her course.

The difference between the rule contained in Art. 17 and the old rule of "port helm" should be observed. In the case of a sailing ship with wind free meeting a steamship end on, her duty is to keep her course, and not, as has been supposed to put her helm to port (see the *Bougainville* and the *James.C. Stephenson*, L. R. 5 P. C. 316).

The obligation which Art. 17 throws upon the steamship in every case where there is risk of collision with a sailing ship is heavy. "The rules require, when a steamship and sailing vessel are approaching from opposite directions or on intersecting lines, that the steamship from the moment the sailing vessel is seen, shall watch with the highest diligence her course and movements, so as to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming in contact". See the *Carroll* 8 Wall 302 - 306; *The Lucile*, 15 Wall., 676; *The Falcon*, 19 Wall. 75).

Although it is the duty of a tug with a ship in tow to comply, so far as possible, with the Regulations, it is also the duty of a third ship to make allowance for the incumbered state of a tug, and to take additional care in approaching her, (see *The American* and *The Syria*, L. R. 6 P. C. 127).

The duty of a sailing ship is to keep the course upon which she was when the other vessel was sighted but if she is beating to windward and goes about where she is compelled to, even though she give no notice to a steamship astern, she will be held faultless, even if it causes a collision with the steamer (see *The Palatine* 1, Asp. Mar.

Law Cas. 468). But a sailing ship must not go about at an improper time or place, so as to embarrass the steamship (see the Potomac, 8 Wall. 590, and see Supra. p. 33, as to the duty of a sailing ship to beat out her tack).

Art. 18. This Article relates exclusively to steamships, requiring them to slow or reverse engines when "approaching another ship so as to involve risk of collision."

Art. 19. In taking any course authorized or required by these regulations, a steamship underway may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, viz:--

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional, but if they are used, the course of the ship must be in accordance with the signal made.

These signals have been in use in America for many years. It has been held that a vessel cannot, by means of these signals, dictate to the other ship a departure from the Regulations (see The

Milwaukee, Brown Ad. 313.)

The "short blasts" of this article (of about one second's duration; Washington Regulations) should not be confounded with the prolonged fog signal blasts of Art. 12. It will be observed that Art. 19 applies only where the other vessel is in sight. If fog hides the other vessel this article does not apply.

The words "I am directing my course to starboard" (or port) mean, I am putting my helm to port (or starboard as the case may be). "Putting my helm to port" means moving the rudder to starboard. In using these terms one should keep in mind that they originated from the use of the tiller and hence whatever sort of wheel you may be using, (i.e. "right-handed" or "left-handed") it should be so operated as to change the tiller to port (if there were one) for "port helm", and to change the tiller to starboard for "starboard helm," confusion is apt to arise if the wheel works opposite to the tiller. The movements of the tiller are always opposite to those of the ship's head. In English ships the order which sends the ship's head to starboard is "port", in France it is right the opposite, i.e. "starboard". America, Austria, and

Italy have adopted the English system, others the French: and so if a French pilot receive an English order he would be apt to act directly opposite to the order.

The object of Art. 19 is clearly to apprise the other ship of an alteration of the helm at the earliest possible moment. It is important when ships are in close quarters, that each should know of any alteration in the helm of the other at the moment it is made, so that she may act accordingly.

Art. 20. Notwithstanding anything contained in any preceding article, every ship, whether a sailing ship or a steamship overtaking any other, shall keep out of the way of the overtaken ship..

Under this article a sailing ship overtaking a steamship is in duty bound to keep out of the way of the steamship. No particular course is prescribed for the overtaking ship to take to keep out of the way. She may go ahead or astern of the other, or on either side of her as he thinks best (see p. 14).

In *The Cayuga* 14 Wall., 270 Judge Clifford expresses an opinion that a vessel was "Overtaking" another only when astern of the other and pursuing the same general

direction. In this case it was held that two steamships on intersecting courses (S. by E. and S. S. W.) were crossing ships, although one was abaft the beam of, and going faster than, the other. This case is inconsistent with other decisions (see p. 19).

The rule, that an overtaking ship must keep out of the way of a ship ahead, was a rule of the maritime law, and was merely formulated by the Regulations of 1863 (see Whitridge v. Dill 23 How. 448). This rule clashed with the equally well established rule that a ship with the wind free must keep out of the way of another close-hauled. In The Clement, 1 Sprague 257: 2 Curtis, 363, where a brig and a schooner were upon converging courses, the schooner overtaking the brig, it was held that the brig was in fault for not keeping out of the way, she having the wind free. It was said that, if she had been close-hauled it would not have been her duty to keep out of the way.

Under Article 20, a sailing-ship overtaking another must keep out of the way though she is close-hauled the other is free. To be an "overtaking" ship she must be going faster than the overtaken ship. The duty of the

ship ahead ordinarily is to keep her course under Art. 22, (see p. 28).

It has been held that a vessel was in fault for attempting to pass another ahead in a narrow channel, where it was so narrow as to involve risk of collision in making the attempt, and that the rule requiring the overtaking ship to keep out of the way does not cease to operate the moment the overtaking ship gets her nose ahead of the other. But in this case the overtaking ship was the longer and her stern was not yet up to the stern of the other. (see the *Naragansett*, 10 Blatchf. 475: and *The City of Paris*, 1 Bened. 174: 9 Wall. 634).

Article 21. In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or midchannel which lies on the starboard side of such ship.

This Article applies to sailing vessels as well as to steamships when such a course may be adopted. Of course a sailing ship with a head wind could not keep to one side of the stream. This Art. does not apply in the East River, at New York, where it is the law that vessels going up or down shall keep in midchannel. Where a ship

is required by law to keep on one side or the other, if she is on her wrong side she is held to be in fault for a collision with another ship that is on her right side and has done all the law requires to keep clear (see *The Ivanhoe* and *The Martha M. Heath*, 7 Bened. 213; *The Vanderbilt*, 6 Wall. 225; *The Bay State* 3 Blatchf. 48, 1 Parsons on Shipping (ed. 1869), 582).

There is great difficulty in applying some of the articles of the general Regulations to ships navigating a narrow and tortuous river, especially the "crossing" and "meeting" rules.

In *The John L. Hasbrouck*, 3 Otto, 405 (93 U. S.) it was held that where a well-known usage has sanctioned one course for a steamer ascending, and another for a sailing vessel descending, a river, the vessel, if required by natural obstructions to navigation to change her course is, after passing them, bound to resume it.

In this case a sailing ship descending a river on a southerly course sighted a steamship ascending it. In accordance with the practice of the river, the sailing ship was on the west, and the steamship on the east side of the channel. Between the two vessels the river took a

bend in a south easterly direction. On reaching this bend the sailing-ship's helm was put to starboard to make the turn. Instead of resuming her course along the west side of the river she kept on her course which was taking her to the east side of the river. She held her course in obedience to Rule 18 of the Regulations of 1863 which required a sailing vessel to keep her course when approaching a steamer in such direction as to involve risk of collision.

Crossing to the east shore she ran into the steamer, which had continued her original course along that shore. She was held in fault for not resuming her course along the west shore, and only deviating so far as the winding of the river required. Here it was held that the Regulations are to be complied with as far as possible, but that the term "keep her course" meant "keep her course along the west shore and not to keep the compass course. And it was also held that where two vessels will pass clear if each adheres to the customary track, the Regulations have no application: and that a vessel deviating from the accustomed track in supposed obedience of the Regulations is in fault.

In a narrow river it is the duty of a sailing vessel to

indicate to vessels ahead, her course. That is she must not lead them to think she intends taking one course and then take another which brings about a collision. In *The Free State*, 91 U. S. 200, it was held that where both vessels are in plain sight, one an ascending steamer and the other a descending sailing vessel, and the sailing vessel shapes her course westerly so as to pass clear of the steamer, the steamer had the right to assume that the sailing vessel would hold her westerly course, and that the descending steamer was in the right in shaping her course to the east in order to pass the sailing vessel; and that a subsequent change of the course of the sailing vessel to the east when she had plenty of room to stand on when within three hundred feet of the descending steamer, was unjustifiable, and that the collision resulting therefrom was solely the fault of the sailing vessel.

Article 22. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course.

Since a vessel, B, required by the regulations to keep out of the way of another, A, may go ahead or astern, or on either side of A, it is the duty of A. to keep her course that B. may make her calculations accordingly, and not

have them thwarted. The rule, therefore, requiring A. to keep her course must be strictly observed. In the New York and Liverpool U. S. Mail Co. v. Rumball, 21 How. 372, 384, the court said: "The negligence of one ship is liable to baffle the vigilance of the other, and if one of the vessels, under such circumstances, follows the rule, and the other omits to do so, or violates it, a collision is almost sure to follow."

If a ship bound to keep her course undertakes to justify her departure from that rule, she takes upon herself the burden of showing that her departure was, at the time it took place, necessary in order to avoid immediate danger, and also that the course was clearly a course that would seem to avoid the danger. (see *The Scotia*, 14 Wall, 170; *The Potomac* 8 Wall, 590)

Although a steamer must keep out of the way of a sailing vessel, it is equally imperative upon the latter to keep her course; and where, by her unnecessary deviation therefrom, a collision is rendered unavoidable, the steamer is not liable therefor. (see *The Illinois*, 103 U. S. 298). As to the meaning of "keeps her course" when the vessels are in a winding river see p. 26

A ship hove-to with her helm lashed, forging ahead as

she comes to and falls off, is not "keeping her course".

See p. 15.

"Keep her course" means keep her course by the wind and not strictly by the compass; so that she would be blameless for luffing or keeping off according as the wind was more free or as it headed her off; but she would be in fault if she kept off more than was necessary. (see *The Elizabeth Jones*, 112 U. S. 514).

That a ship must not stand on obstinately, see p. 15.

A sailing ship, working to windward in company with other ships, whose duty it is to keep out of her way, must "beat out her tack". If she goes about in a narrow channel before she is compelled to, and comes into collision with another ship which would have cleared her if she had stood on, she is held to be in fault for the collision. (see *The Empire State*, 1 Bened. 57). In this case a sailing ship going about came in collision with a steamship, and the court said: "What the law requires for a sailing vessel in a narrow channel is, to beat out her tack, and, having beat it out, to come about with all proper dispatch upon the other, leaving the steam vessel the responsibility of being in a position to enable her to do so without danger. She is not obliged to remain in the

wind for a steamer to pass her:"

But in a flat calm, it was held that a sailing ship whose duty it was to keep her course could not be in fault. (see *The Commerce*, 16 Wall. 33).

A sailing ship approaching a steamship and seeing there was risk of collision, kept away two or three points. She was held to be in fault, the court holding that she had no right to change her course as soon as she "apprehended collision." Her "apprehension of collision could not justify her in changing her course." It is the actual risk or danger of collision that determines the duty of both vessels, and not the apprehension merely" (see p. 4 *Risk of Collision*, and *The Gen. U. S. Grant*, 6 Bened. 465, 467; *The Adriatic*, 107 U. S., 512 as to duty to keep course).

This rule was made and is administered for the very purpose of preventing vacillation and indecision on the part of the vessel required to keep her course. (see *The Stephen Morgan*, 94 U. S., 599).

A schooner mistaking the mast-head light of a steamship for a light ashore was held solely in fault for not keeping her course, although she first came-to, to get a

cast of the lead, showing her red light, but seeing her mistake crossed the course of the steamship. (see *The Virgo*, 7 Bened., 495).

A ferry boat, under a port helm when she sighted another steamship coming up the river, was held in duty bound to "keep her course" by keeping her usual track (see *The John Taylor*, 6 Bened. 227).

A vessel, A., starboarded in order to assist another, B., whose duty it was to keep out of her way, in an attempt to cross her bows. Finding that she could not cross A.'s bows, B., at the last moment stopped. This stopping and A.'s starboarding, caused a collision. A was held to be solely in fault. (see *The Corsica*, 9 Wall. 630).

Where the channel was narrow and navigation difficult, a schooner, having three channels open for her, sighted a steamship ahead which could take but one of the channels. The schooner kept her course and took the steamship's channel, when she might have avoided any risk by taking one of the other channels. She was held in fault, (see *The City of Hartford*, 7 Bened. 350).

A sailing vessel may not pertinaciously keep on her course and run down a steamship. (see *The Sunnyside*, 91 U. S. 208).

Article 23. In obeying and construing these rules due regard should be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary to avoid immediate danger.

The application of this rule by the decision in *The Non-Pareille* 33 Fed. 524 where it is held that the Regulations to prevent collisions and not to excuse them, and that in the presence of danger of immediate collision, there is no absolute right of way, and both of two approaching vessels are bound to give way and depart from the usual rule, if such departure will plainly avoid a collision. (see ante, pp. 15, 32 and cases cited; also *The Cayuga*, 14 Wall. 270, *The Sunnyside*, 91 U. S. 208).

It is sometimes attempted to urge this article as an excuse from the departure of the Regulations, where an adherence to them would have prevented collision. In such a case Article 23 does not apply, but the Regulations must be applied wherever such application will prevent a collision. Great caution must be used in departing from the regulations. She may do so only where the circumstances are very exceptional. In *the Maggie J. Smith*, 123 U. S. 349, at p. 354 Field, J., says this Article only applies

where there is some special cause rendering a departure necessary to avoid immediate danger, such as the nearness of shallow water, or a concealed rock, the approach of a third vessel or something of that kind.

Where a ship required by the Regulations to keep out of the way is unable to do so, it is the duty of the other, not to keep her course, but herself to keep out of the way. Two vessels close-hauled on opposite tacks, were crossing, and the ship on the port tack could not keep off for fear of collision, and could not go about because of a shoal. It was held that the ship on the starboard tack was in fault for not keeping out of the way. (see *The Ann Caroline*, 2 Wall. 538).

But to justify a departure from the regulations which is alleged to have been necessary to avoid immediate danger, there must be clear proof that an adherence to them would have caused such danger, and also that the step taken was the right step. (see *The Corsica*, 9 Wall 630) (Also ante n. 29. bottom).

In the *H. P. Baldwin*, Brown Ad. 300, it was held that the fact of a schooner's flying jib being carried away was no excuse for her not keeping off; and that the other

ship was not in fault because she failed in the daytime to see that the schooner was partially disabled.

No ship, under any circumstances, to neglect proper precautions.

Article 24. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

If a ship is proved to have been negligent in not keeping ^{proper} look-out she will be held answerable for all the reasonable consequences of her negligence. In *The Panita*, 14 Blatchf. 545, where the look-out upon a schooner failed to report a steamer's light which could not be seen by the man at the wheel, the schooner was held partly in fault for the collision.

In ordinary cases one or more hands should be specially stationed on the look-out by day as well as at night. They should not be engaged upon any other duty, and they should be stationed in the bows, or in that part of the ship

from which other vessels can best be seen. (see *The Belganland*, 114 U. S. 355, *The Sunnyside* 91 U. S. 208; *The Manitoba*, 122 U. S. 97; *The Morning Light*, 2 Wall 550; *The Chambuland vs. Ward*, 21 How. 548, 570; the man at the wheel is not sufficient, *the Northern Ind.* 3 Blatchf. 92; *The Comet* 9 Blatchf. 323; *The Parkersburg* 5 Blatchf. 247; *The Douglass Brown*, Ad. 105; *The Nabob*, Ibid. 115; *The Blossom Olcott*, 188).

A vessel anchored in a frequented channel should have an anchor-watch ready to sheer her clear of an approaching vessel or to give her chain. (see *The Raynor*, Brown Ad., 342; *The Marcia*, Tribon, 2 Sprague, 17).

A vessel anchored inside Delaware Breakwaters was held solely in fault for a collision with a ship coming in for shelter. She had no watch on deck, and it was proved that, if there had been one, the collision might have been avoided. Apart from the collision itself, there was no evidence of negligence on the part of the vessel under way: and there was a heavy snow-storm about the time she came in. (see *The Clara*, 102 U. S. 200).

That all hands were engaged in reefing in the day-time, is no excuse for the absense of a look-out) (see *Catharine*

vs. Dickenson, 17 How. 170; also Thorp vs. Hammond, 12 Wall 408; also *The H. P. D.*, Brown. Adm. 300), or that they were repairing damage caused by an accident (see *The Whiting vs. Dill*, 23 How. 448). Ferry-boats and vessels crossing the tacks of ferry-boats must keep a specially good look-out. (see *The America*, 10 Blatchf. 155).

A vessel under way is bound to keep clear of another at anchor. If a vessel is at anchor, or lying at her established moorings, it can scarcely happen that the other would not be held in fault for the collision. (see *Culbertson vs. Shaw*, 18 How. 584; *Portevant vs. The Bella Dona*, Newb. Adm. 510; *The Bridgeport*, 7 Blatchf. 361; 14 Wall 116; *The Granite State*, 3 Wall 310; *The _____* and the ~~_____~~ 7 Blatchf. 378).

For the Rule as to "beating out tacks" see p. 30, but this rule does not apply so as to preclude a ship from going about before she reaches the shoal water in order that she may be able to weather a point of land, or other object, on the next tack. (see *The Vicksburg*, 7 Blatchf. 216; *The Empire State*, 1 Bened. 57).

There is a conflict in the cases as to whether a ship, being in stays, is obliged to hold herself in stays to

allow a other vessel to pass. (Compare the W. C. Redfield p. 18, 19, and The Empire State p. 30):

In New York Harbor, where ferry-boats are constantly coming, out from their slips at right angles to the course of vessels navigating in the river, the law requires vessels navigating the river to keep in mid-channel, or if they go along the shore to go very slowly. (see The Favorita, 18 Wall 598). It is also the custom to blow a prolonged blast upon the whistle of a steam vessel coming out of a slip where she does not make regular trips, and where she may not readily be seen.

The latter part of this rule as to "ordinary precautions" might well occupy the whole space of this thesis but want of space forbids its further consideration.

Reservation of rules for harbor and inland navigation.

Article 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river, or inland navigation.

Article 26, relates to "Special Lights for Squadrons and Convoys."

Article 27. When a ship is in distress and requires assistance from other ships or from the shore, the

following shall be the signals to be used or displayed by her, either together or separately, that is to say:

In the daytime

First. A gun fired at intervals of about a minute.

Second. The international code signal of distress indicated by N. C.

Third. The distant signal, consisting of a square flag, having either above or below it a ball, or anything resembling a ball.

At night---

First. A gun fired at intervals of about a minute.

Second. Flames on the ship (as from a burning tar-barrel, oil-barrel, and so forth).

Third. Rockets or shells, throwing stars of any color or description, fired one at a time, at short intervals.

