

outward bound, and she saw the "Elliott's" red light about two miles off, a point or point and a half on her starboard bow. Each vessel soon made out the other's course.

The "Elliott," seeing that the "Cuba" kept her bearings for some time, with both side lights always visible, further ported her helm, and the "Cuba" went further to starboard. When they were about a quarter of a mile apart, the "Elliott's" helm was put hard to port, and the "Cuba" turned sharply to port, shutting out her red light. When about two cable lengths away the "Cuba" signalled by two blasts of her whistle that she was going to port. The "Elliott" then reversed her engines, but perceiving almost immediately that the bow of the "Cuba" was turned to starboard, instead of to port, set them going again at full speed hoping to cross clear of the "Cuba's" bow. The vessels were, however, too close together, and the "Cuba's" bow struck the "Elliott" a little abaft amidships.

*Held*, that from the evidence and finding of the local judge in Admiralty, Nova Scotia District (5 Ex. C.R. 135), the vessels were not end on or "meeting" ships, nor "crossing" ships with the lights red to green or green to red, but they were "passing" ships, one side light of the "Elliott" being seen dead ahead of the "Cuba." In such case there is no statutory rule imposed, as unless the course is changed, the vessels must go clear of each other; it is governed by the rules of good seamanship. The "Elliott," therefore, violated no statutory rule in porting her helm, and acted consistently with good seamanship.

*Held*, further, that the "Cuba" was in fault in persisting, without good reason, in keeping on the wrong side of the fairway; in starboarding her helm when it was seen that the "Elliott's" was hard to port with the vessels rapidly approaching; and after signalling that she was going to port in reversing her engines, whereby her head was turned to starboard.

*Held*, also, that though the "Elliott" may have violated the statutory rule requiring her to slacken her speed, or stop and reverse if necessary when approaching another vessel, so as to avoid risk of collision, yet as the omission to do so would have led to no injurious consequences if the "Cuba" had acted in conformity with her signal, she was not for that reason responsible for the accident. R.S.C., c. 79, s. 5.

The rule as to steam vessels keeping to their starboard side of a narrow channel does not override the general rule of navigation. The *Leverington* (11 P.D. 117) followed.

Appeal dismissed with costs.

*Mellish*, for the appellant.

*Harris*, Q.C., for the respondents.

Nova Scotia.]

[Dec. 9, 1896.]

MCLAUGHLIN *v.* MCLELLAN.

*Will—Execution of—Testamentary capacity—Mental condition of testator.*

In proceedings before a Court of Probate to prove a will in solemn form, evidence was offered to show that the testator, when he gave instructions for