the courts as a contentious litigant; but as a great nation, acknowledging their obligation to recognise as valid every authentic title, and soliciting exact information to direct their executive Government to comply with that obligation.

They had instrumentalities adequate to the fulfilment of their engagements without delay, whenever their existence was duly ascertained. There was no occasion for the strict rules of proceeding that experience has suggested to secure a speedy and exact administration between suitors of a different character. And it has rarely occurred that the same case has reappeared in the court after the first decree. If the litigation had been other than it was, the rule of proceeding would have varied with it.

But, after the authenticity of the grant is ascertained in this court, and a reference has been made to the District Court, to determine the external bounds of the grant, in order that the final confirmation may be made, we cannot understand upon what principle an appeal can be claimed until the whole of the directions of this court are complied with, and that decree made. It would lead to vexatious and unjust delays to sanction such a practice. It is the opinion of the court that this appeal was improvidently taken and allowed, and must be dismissed; and that the District Court proceed to ascertain the external lines of the land confirmed to the appellee, and enter a final decree of confirmation of that land.

RUSSELL STURGIS, LIBELLANT AND APPELLANT, *v.* JOHN CLOUGH, ROBERT L. MABEY, AND HENRY M. WEED, CLAIMANTS OF THE STEAMBOAT R. L. MABEY, HER TACKLE, &C.

Where two steam-tugs are approaching a vessel from different directions, in order to secure the contract of towing her into harbor, the established rules are, that the steamer which is following in the wake of the vessel should come up on her starboard quarter and slack her engine, whilst the steamer which is approaching from the opposite direction should round to, either to windward or leeward, so as to head the same way as the vessel.

In the present case, the evidence shows that the master and pilot of the last-mentioned steamer were in fault by not conforming to the established rule, and thereby caused the collision which ensued between the two steamers.

THIS was an appeal from the Circuit Court of the United States, sitting in admiralty, for the southern district of New York.

The facts in the case are set forth in the opinion of the court.

The District Court dismissed the libel, each party paying his own costs.

The Circuit Court affirmed this decree, and that the appellees recover of the libellant their taxed costs of appeal.

The libellant appealed to this court, where it was argued by *Mr. Benedict* for the appellant, and *Mr. McMahon* for the appellee.

Mr. Benedict contended, amongst other points, that the evidence established the custom, that when tugs met a vessel, they rounded to or went around her, so that the bows of the two vessels would be in the same direction.

Mr. McMahon contended that the Hector was in the wrong, because the rule is, that when vessels are approaching each other under such circumstances, each should keep to the right; and if the Hector had done so, no collision would have ensued.

These were only the main points in the arguments, which branched out into many other points.

Mr. Justice GRIER delivered the opinion of the court.

The libellant in this case is owner of a steam-tug called the Zachary Taylor, or Hector.

The claimants are owners of the steam-tug Mabey.

At the time of this collision, on the 11th of August, 1854, they were both engaged in the business of towing vessels into the port of New York from the neighborhood of Sandy Hook.

The Hector was an old, heavy boat, some one hundred and eighty or one hundred and ninety feet long; the Mabey a new, light boat, of about one hundred feet in length, and much the swifter of the two, in the ratio of about fourteen to eight.

They were each looking out for employment about noon of that day, when the brig Wanderer was passing in, by Sandy Hook, sailing slowly in a northwest course. The two steamtugs must have been some two or three miles apart, when they each started for the brig in different directions, in order to tender their services. Each boat put on all its steam, as the first who could hail the brig would be entitled to the job.

The Hector, being in the rear, came up in the wake of the brig, and nearly on her course. The Mabey came in S. S. E. course, meeting the brig in an acute angle to its course. As they came together near the starboard quarter of the brig, their respective distances from her at the time of starting must have been in the ratio of their velocities. The Mabey, being much the fastest boat, no doubt expected to make up for this difference of distance by her superior fleetness.

According to the established rules for navigating boats under such circumstances, the Hector, which was following in the wake of the brig, should come up on her starboard quarter, and slack her engine, so as not to pass the brig. The Mabey, which was coming down in the opposite direction, ought to round to, either to windward or leeward, so as to head the same way as the brig. Had these well-known rules been observed, no collision would have occurred in consequence of the race for precedence.

Cases may occur in which two steamboats engaged in unlawful racing may recklessly or wilfully dash against each other; and the courts, treating them both as criminals, may refuse to sustain an action or decide which was most to blame, leaving each to suffer the consequences of his own folly and recklessness.

We do not think that the testimony shows this to be such a case. Each of these boats had a right to move as fast as it could in order to obtain precedence, and each had a right to expect that the other would pursue the customary and proper course in navigating their vessels, in such circumstances, by the observance of which there would be no danger of collision.

Have both these boats, in their anxiety for precedence, disregarded the proper precautions to avoid a collision, or is the

fault wholly to be attributed to the mismanagement of the Mabey?

The defence set up in the answer, that the Mabey "got to the brig first, slacked her speed, slowed and stopped, and that the Hector attempted to pass under the bows of the Mabey, and in executing that manœuvre, with the covetous desire of getting the right to tow the brig, she ran against the Mabey, obliquely," &c., is clearly and satisfactorily proven to be not true. The fact that the stem of the Mabey, the lighter and swifter boat, was driven into the starboard bow of the Hector, stripping her guards down to the wheel, shows conclusively that the Mabey was not stopped, but was under nearly full headway.

If the collision had occurred as stated in the answer, the great momentum of the larger boat would most probably have sunk the smaller.

The witnesses on the Hector all concur that, though the engineer was directed to proceed with his utmost dispatch, the Hector followed in the wake of the brig, and when near to her had slacked her speed and stopped her wheel, so as to lap on the stern of the brig as she came alongside of her starboard quarter, and within twenty feet of her; and that she was nearly at rest when the Mabey ran, with all her force, into the starboard bow of the Hector. As these witnesses are all confirmed by the pilot of the brig, who was an impartial observer of the whole transaction, his statement may be fairly taken as a correct representation of it.

He states that he first saw the Hector about a mile distant, heading towards the brig, about northwest; that she came up to the brig in about ten minutes, stopped her engine when she came within one hundred to two hundred yards of the brig, and then came alongside with the way she had on; and the captain spoke to the witness. That the brig was going at the rate of about a mile an hour, and the Hector was dropping astern, if anything, when the Mabey ran into her.

That, when he first observed the Mabey, she was about half a mile off, coming southwest or west-southwest; that she was about an eighth of a mile from the brig when the Hector let

her steam off; that she continued her course till she struck the starboard bow of the Hector, and ran into her forward of the wheel-house; that, when the pilot of the Mabey discovered that he had run his boat so as to render a collision inevitable, he ran out of the pilot-house and went aft; that the wheels of the Mabey were in motion till the time of the collision; that the Hector could do nothing to avoid the collision, because she had stopped her engine and was falling behind the brig.

The master of the Hector acted on the supposition that the Mabey, according to custom, would round to, and could not anticipate that, contrary to all rule, she would run into the Hector, as she lay nearly at rest, lapping on the stern of the brig, when a single turn of her wheel, with her great headway, would have run her entirely clear of any danger of collision. Hence, when his pilot told him the Mabey was coming in a direction to run into him, he said, "No, she will go under our stern." He presumed, and had a right to presume, that the pilot of the Mabey knew his duty, and intended to round to behind the stern of the brig and tug, and not make the reckless attempt to run between them.

The testimony of the pilot of the Mabey, in fact, confirms this view of the case, and shows the collision to have been occasioned entirely by his own fault, or that of the master, who directed him. He says, "My instruction was to run close to the brig's stern." The master says, "He expected the Hector would get out of his way;" and the pilot says, "I *supposed* she would go on the other quarter, or else steer outside of me." In other words, he proceeded in a direction which he knew must produce a collision unless the Hector would get out of his way. It is clear that his intention was to drive the Hector away from the brig, or compel her to take the consequences. The pilot admits, also, that he knew the proper way to approach the brig was by rounding to; which would not have brought him within three hundred feet of the point of collision. He admits, also, that he could have gone on either side of the brig, and "knew it was nautical and customary to come up on the weather quarter, and to round to for a tow, but he had in-

structions from the captain to go for the brig, and to get there before the Hector if he could."

We are of opinion, therefore, that the evidence clearly shows that this collision was occasioned wholly through the fault of the master and pilot of the Mabey.

The decree of the Circuit Court is therefore reversed, with costs, and the record remitted with instructions to enter a decree in favor of libellant, and have such further proceedings as to justice and right may appertain.

THE WESTERN TELEGRAPH COMPANY, APPELLANTS, *v.* THE MAGNETIC TELEGRAPH COMPANY AND ARUMAH S. ABELL AND ZENUS BARNUM.

Where there was a telegraph company from Baltimore to Wheeling, with branches to Washington and Pittsburg, and another company from Pittsburg to Philadelphia, and from Harrisburg to Baltimore; and the former company complained that the latter received messages at Philadelphia, sent from Pittsburg and Wheeling, directed to Baltimore and Washington; and there was no direct infringement of the patent right, nor any violation of a contract, the case is without a legal remedy.

Every person is at liberty to use a circuitous route, if he prefers it to a shorter route.

THIS was an appeal from the Circuit Court of the United States for the district of Maryland.

The case is stated in the opinion of the court.

It was argued by *Mr. Cornelius McLean* for the appellants, no counsel appearing for the appellee.

Mr. McLean's points for the complainants and appellants were the following:

1st. That they are, under their assignment, entitled to all the business between Wheeling and Pittsburg, and Washington and Baltimore.

The defendants could not have set up a parallel line of telegraph between those points, and the question is simply whether