omitting to obey the "law of the sea" which required her "when approaching another vessel so as to involve risk of collision, to slacken her speed, or, if necessary, to stop and reverse." She not only did not reduce her speed, but she changed her course, and to each of these causes the collision was attributable. That she was conscious of the risk of collision is demonstrated by the fact that she deemed a change of her course necessary to avoid it, and so effected the change. She observed the torch-light on the brig, and thus was warned of the proximity of another vessel when she was at a sufficient distance to enable the steamer to adopt effective precautions against collision. But she recklessly or inconsiderately maintained her speed, and thus rendered the destruction of the brig inevitable.

For these reasons I am of opinion that the cause was rightly decided by the learned judge of the district court, who exhaustively considered it, and it is therefore ordered that the same decree be entered at length in this court which was rendered in the district court, together with the interest to the date, in favor of the respective libelants and against the respondents and their stipulators, with all the taxable costs in the case.

See *The Golden Grove*, *ante*, 674.

THE E. A. BAISLEY.

(*District Court, E. D. New York.* October 9, 1882.)

ADMIRALTY—SERVICES OF COOPER—PERFORMANCE ON REQUEST.

Where a vessel laden with sugar was discharged at quarantine in New York harbor, the master being sick and the mate temporarily in charge, and a master cooper thereafter libeled the vessel for services said to have been performed by one of his men in coopering casks on board, and the claimants of the vessel, in defense, undertook to show that the cooper was accidentally there, and was not employed by any one on behalf of the ship, *held*, that the facts proved—the presence of the cooper; that casks were necessarily coopered; that the mate who had charge brought the cooper there; and that a bill rendered for the work was not objected to by the mate, save one item, which was corrected,—were sufficient to warrant the conclusion that the mate directed the work to be done on behalf of the vessel with apparent authority, and that the cooper performed it at his request.

Beebe, Wilcox & Hobbs, for libelant.
Benedict, Taft & Benedict, for claimant.

BENEDICT, D. J. The necessity for the services of a cooper in behalf of the vessel is shown by the evidence that the lightermen refused to receive the cargo until the casks were coopered. The testimony to this fact is not contradicted. The presence of the cooper, Kippel, on board the vessel while the cargo was being delivered to the lighter is proved not only by the libelant's witnesses, but also by the claimant's witness Lewis; and it does not appear that Kippel had any business there unless it was to cooper the cargo. Two witnesses testify that the mate of the vessel employed Kippel to cooper the cargo before it left the vessel, and brought him to the vessel for that purpose. This testimony is not contradicted. The claimant's witness Lewis proves that the mate had charge of the delivery of the cargo to the lighters, showing that if the cargo required to be coopered the mate would naturally have been the man to order it. The mate is not called in behalf of the vessel, and his absence is not accounted for. Kippel made a demand of the libelant for labor performed by him in coopering this cargo, and he has been paid therefor by the libelant. When Lewis saw the bill of libelant for Kippel's labor and one empty cask, the only objection he made was to the item of the cask, and the bill was corrected in that particular. These facts compel the conclusion that the services sued for were rendered on board the vessel by Kippel, and that they were performed at the request of the mate, who had an apparent authority to contract therefor. The liability of the vessel follows, of course.

Upon the evidence the libelant can recover for four days at five dollars per day. There is no evidence as to the quantity or value of material furnished. Let the decree be for $20 and costs.

SHIRLEY v. WACO TAP R. CO. and others.

(*Circuit Court, N. D. Texas.* October 18, 1882.)

1. REMOVAL OF CAUSE—SUIT PENDING—APPLICATION TOO LATE.
In a suit pending at the time of the passage of the act of March 3, 1875, and thereafter tried in the state court, wherein judgment was rendered and the cause carried to the supreme court of the state, the application for removal by new parties defendant comes too late, unless the making of the new parties was in effect the institution of a new suit.

2 SAME—TRUSTEES OF DEFUNCT RAILROAD AS PARTIES—TEXAS CODE.
Under the provisions of the Revised Code of Texas, if a party holding a deed in trust of a railroad company sells out the road-bed, track, franchise, and chartered powers and privileges of such company, a suit pending against such company does not thereby abate, and subsequently making the directors of such defunct company parties to such suit is merely a continuance of the original suit, and the application of such directors to remove the cause into the circuit court, made after two trials and judgments, and two appeals, comes too late.

This cause was removed from the state courts by the defendants. Motion to remand made by the plaintiff.

E. A. McKinney, for plaintiff.

Alexander & Winter, for defendants.

PARDEE, C. J. This suit was instituted in the district court of McLennan county, of this state, in 1870, by the plaintiff against the Waco Tap Railroad Company for a breach of contract. Pending the various proceedings, including two trials and judgments, and two appeals to the supreme court of the state, the Houston & Texas Central Railroad Company, holding a deed in trust granted by the Waco Tap Railroad Company, sold the road out and became the purchaser, all of which resulted in making the Houston & Texas Central Railroad Company a party defendant to the original suit. After the last appeal, decided in 1880 and reported in 54 Tex. 125, resulting in a reversal of a judgment of the lower court and a remanding of the case, a consolidated and amended petition was filed, making John T. Flint and others, constituting the board of directors of the Waco Tap Railroad Company at the time of the sale in the proceedings under said trust deed, parties defendant, and asking against them as trustees for all the relief that the plaintiff could have demanded from the Waco Tap Railroad Company had it continued in existence. This last making of parties was done, and perhaps necessarily so, under the provisions of sections 4264 and 4265. Rev. Code of Texas, § 4264, provides that whenever a sale is made of the road-bed, track, franchise, and