The Uncle Abe.

(*District Court, S. D. New York.* October 17, 1883.)

1. Collision—Tug and Tow—Rule 19.
   A tug on rounding the Battery, having another tug on her own starboard hand, is bound to keep out of the way of the latter, under rule 19, and to go astern, where there is nothing else in the way, instead of keeping near the New York shore, and attempting to cross the bows of the other tug between the latter and a large tow ahead.
2. Same—Hugging New York Shore—Rounding Battery.
   The practice of hugging the New York shore to keep in the eddy in rounding the Battery is dangerous, and at the peril of those adopting it.
3. Same—Case Stated.
   Where the tug C., having the D. in tow, permitted another canal-boat, the W., which had broken adrift from another tow, to fasten to the D., and about the same time, a collision being imminent with the Uncle A., the C. backed full speed, as she ought to have done, and the W.'s lines were loosened, as not strong enough to bear the backward strain, and such loosening contributed to the collision, *held*, that the W., and not the C., was responsible therefor, and that the damages from the collision be divided between the W. and the Uncle A.

In Admiralty.

Carpenter & Mosher, for libelant.

C. E. Crowell, for the Uncle Abe.

Beebe & Wilcox, for the S. J. Christian.

Brown, J. This action is brought to recover damages for injuries to the libelant's canal-boat Walt Clark, in the afternoon of November 10, 1880, by a collision with the steam-tug Uncle Abe in the East river, some 300 or 400 feet off pier 3.

The Walt Clark was one of a large tow which had been brought down the North river from Albany, and had arrived at or near the customary place of breaking up the tow, between piers 3 and 6, East river, some 200 or 300 feet off the piers. She was in or near the tail of the tow, and along-side the canal-boat Dillenbeck. The latter had previously engaged the tug-boat S. J. Christian to take her back to the North river. The tug had followed the tow for this purpose, and after coming opposite pier 2 or 3, had taken the Dillenbeck on her own starboard side and was dropping astern with the strong ebb-tide. When the Dillenbeck had got about half a length astern of the tow, the Walt Clark broke loose from the tow, through the cleats giving way upon the boat ahead, to which she was fastened. As the Walt Clark was swinging adrift with the tide, her captain threw a line to the Dillenbeck, made fast, and pulled her along the starboard side of the Dillenbeck, until her bows were some six or eight feet astern of the bows of the latter. This was done without any express permission of the captain of the Christian, but with his knowledge, under his observation, and without dissent. While this was going on, the captain of the Walt Clark hailed the captain of the Christian, and told him he wanted to be towed back to the tow ahead, but no answer was

given until after the collision. The Christian during this time was under a slow bell, heading nearly directly up the river, having scarcely more than steerage-way, and slowly drifting back from the tow, and the men on the boats were engaged in making fast the Dillenbeck as well as the Walt Clark. The Christian thus had two heavy boats lashed to her starboard side, and none on the larboard side,—a somewhat unwieldy and unmanageable condition. In the mean time the Uncle Abe, with two barges in tow, one lashed on each side, had come around the Battery from the North river, and was proceeding up the East river, and on approaching the Albany tow undertook to pass between it and the Christian, which was 200 or 300 feet astern, and a little outside of the tow. The Uncle Abe's stern projected considerably aft of the sterns of her tows, and the bows of the Christian's tows projected considerably ahead of her own bow. As the Uncle Abe came up towards the stern of the Christian she was not noticed until nearly abreast of the latter, when the pilot of the Christian, about half a minute before the collision, reversed his engines full speed astern. The speed of the Uncle Abe was not checked, and the engineer, seeing that a collision was imminent, added all possible speed. The tug of the Uncle Abe passed the bows of the Christian and the Dillenbeck without striking, but the bow of the Walt Clark struck the Uncle Abe upon the port quarter, near the round of her stern, and received considerable injury.

After the Christian commenced backing, she pulled so hard upon the lines of the Walt Clark that, according to the testimony of her captain, the lines would have been broken had he not loosened and "rendered" them out. The bows of the Walt Clark thus worked ahead of the Dillenbeck through the backing of the Christian, and at the same time, through the one-sided position of the Christian, and notwithstanding her wheel was put hard to starboard, the bows of the three necessarily worked somewhat towards the New York shore, and in a position to collide with the stern of the Uncle Abe, as above stated.

The testimony in regard to the positions and directions of the boats is very conflicting. Within the narrow space in which these boats were maneuvering, with an eddy in-shore, a strong ebb-tide further out in the East river, and every gradation in the currents between, it is impossible to fix with perfect accuracy the position and direction of the two tugs at the time of the collision and the few minutes preceding it. I have no doubt, however, that the Christian, at the time of the collision, was astern of the tow and a little outside of it, was pointing a little towards the New York shore, and making for the tow where she was intending to take the Walt Clark; that the Uncle Abe was passing between the Christian and the tow, was crossing the former's bows, and was pointed toward the Brooklyn shore, south of Fulton ferry. She had come round the Battery near the New York shore, and she had the Christian upon her starboard hand. By rule

19 she was bound to keep out of the way, and by the inspector's rules was bound to go astern of the Christian. The primary cause of the collision was the Uncle Abe's approaching the Albany tow and the tug Christian too closely on the shore side, in the endeavor to keep within the eddy by the shore as long as possible to avoid the strong ebb-tide further out, instead of going outside and astern of the Christian. While it is admitted that it is a common practice for boats going either way around the Battery to hug the shore, this furnishes no excuse for any non-observance of the rules of navigation, or for the violation of the statutes of the state, which forbid steamers to approach or to pass boats ahead of them within 60 feet. The practice is a dangerous one, and must always be at the peril of the vessel. For violating these rules the Uncle Abe must be held liable.

The Walt Clark struck the Uncle Abe so near the stern of the latter that I am satisfied the collision would not have happened had not the lines of the Walt Clark been loosened when the Christian commenced backing. The loosening of the lines was an act which plainly thwarted the efforts of the Christian to prevent the collision by backing, and which would otherwise have been effectual. If these lines were, as the captain apprehended, not strong enough to hold against the Christian's reversed engines, this was wholly the fault of the Walt Clark, and not of the Christian. The latter had permitted the Walt Clark to fasten to the Dillenbeck as a matter of humanity, and was in no way connected with the insufficiency of her fastenings, if they were insufficient. As between the Walt Clark and the Christian, therefore, the latter must be exempted from liability, since she backed in season to evert the collision, and had the right to assume that the Walt Clark used lines sufficient for the ordinary maneuvering of the tug. I am not satisfied from the evidence that there was any violation by the Christian of either of the local or general rules of navigation; and the Walt Clark must answer for the insufficiency of her lines, or for loosening them, if they were in fact sufficient.

The libel, as against the Christian, should, therfore, be dismissed, with costs, and the damages should be divided between the Walt Clark and the Uncle Abe, and the libelant have judgment for one-half her damages, with costs, against the latter. An order of reference may be taken to compute the amount.

UNITED STATES v. SOUTHERN COLORADO COAL & TOWN CO. and others.[1]

(*Circuit Court, D. Colorado.* November 1, 1883.)

1. LAND GRANTS AND GOVERNMENT PATENTS—FRAUD—GRANTS TO FICTITIOUS PERSONS.
   It is necessary to the validity of a deed that the grantee should be capable of taking title. A grantee being as necessary to the conveyance of land as a grantor, it follows that a grant to a fictitious person is void; and a patent for land to a fictitious person not in existence carries no title, and invests no interest in any one.
2. SAME—BONA FIDE PURCHASERS FOR VALUE.
   The claim for protection by *bona fide* purchasers of land, for which patents have been obtained by fraud, can only be maintained by showing that the legal title has passed to them; but in a case where the original patents are void, and consequently the title never passed, the doctrine of *bona fide purchasers for value*, and without notice of fraud, cannot be invoked. On the principle that a grantor can convey no more than he possesses, he who comes in under the holder of a void grant can acquire nothing.
3. SAME—LACHES ON THE PART OF THE GOVERNMENT.
   One of the limitations to the general rule that when the government becomes a party to a suit in its own courts it stands upon the same footing as individuals, and must submit to the law as administered between man and man, is that neither the defense of the statute of limitations nor that of laches can be pleaded against the United States. (*U. S.* v. *Beebee*, 17 FED. REP. 36, distinguished.)
4. SAME—EQUITABLE ESTOPPEL.
   Held, not to apply, the respondents not being innocent purchasers within the meaning of the rule, and for the further reason that the government cannot be estopped by the frauds or crimes of its public officials.

On Final Hearing.

W. S. Decker, Special Assistant United States Attorney, for complainant.

Lyman K. Bass, Wolcott & Milburn, and *John M. Waldron*, for respondents.

MCCRARY, J. The important allegation of the bill is that the patentees named in the patents sought to be set aside,—61 in number,—as well as the witnesses by whom proof of pre-emption purports to have been made, were all fictitious persons, having no existence in fact. It is averred that the pre-emption papers, together with the signatures thereto, were fraudulently manufactured by certain conspirators named, or other persons unknown, for the purpose of cheating and defrauding the complainant out of its title to the lands in question. In other words, the contention of the complainant is that the officers of the general land-office were by fraud induced to execute patents to fictitious persons, so that there were in fact no grantees capable of taking title. We will first inquire whether the proof sufficiently shows that is true as matter of fact. The bill sets out the names of the supposed pre-emptors and patentees, to the number of 61, and charges that they are myths and fictitious persons, and that the names are fictitious names; that no persons by such

[1] Reversed. See 8 Sup. Ct. 131, *Sub nom.* Colorado C. & I. Co. v. U. S.