

In the last case the question was also considered whether overdue and unpaid coupons for interest, attached to a municipal bond which had several years to run, rendered the bond and the subsequently maturing coupons dishonored paper, so as to subject them in the hands of a purchaser for value to defenses good against the original holder. The court held that their presence had no such effect, asserting that "the simple fact that an installment of interest is overdue and unpaid, disconnected from other facts, is not sufficient to affect the position of one taking the bonds and subsequent coupons, before their maturity, for value as a *bona fide* purchaser."

In *Parsons v. Jackson*, 99 U. S. 434, the payment of the bonds of a railway company in Louisiana was in controversy. The bonds had never been issued by the company, but had been seized and carried away during the late rebellion. They were drawn payable to bearer either in London, New York, or New Orleans, and the president of the company was authorized to fix the place of payment by his indorsement thereon. When stolen, they contained no such indorsement. They were offered for sale and were sold for a very small consideration in the market of New York, with due and unpaid coupons for several years attached to them. The court held that the absence of the required indorsement was a defect which deprived the bonds of the character of negotiability, and that the purchaser was affected with notice of their invalidity. Mr. Justice BRADLEY, speaking for the court, asserted "that the presence of the part due and unpaid coupons was itself an evidence of dishonor, sufficient to put the purchaser on inquiry." But in the subsequent case of *Ry. Co. v. Sprague*, 103 U. S. 756, this expression of the learned justice is commented on, qualified, and restricted, and it was again held, and may now be accepted as the law, that overdue and unpaid interest coupons attached to municipal bonds are not in themselves sufficient to put the purchaser upon inquiry.

Let judgment be entered for the plaintiff.

In re BYRON.

(Circuit Court, S. D. New York. November 23, 1883.)

HABEAS CORPUS—COMMITMENT BY UNITED STATES COMMISSIONER—SUFFICIENCY OF EVIDENCE.

Where there is evidence tending to show that a party who has been committed by a United States commissioner for an offense against the laws of the United States is guilty, the sufficiency of such evidence is not open to review on proceeding by *habeas corpus*; and while the relator is held according to his judgment upon any competent evidence, he is not held in custody contrary to law.

Habeas Corpus.

C. S. Spencer, for relator.

Benjamin B. Foster, Asst. U. S. Atty., for the United States.

WHEELER, J. The relator is held in custody by the marshal, on a commitment by a commissioner of this court, awaiting the order of the judge of this district for his removal to the district of Connecticut, under section 1014, Rev. St., for breaking or attempting to break into the post-office at Birmingham, in the district of Connecticut, contrary to the provision of section 5478, Rev. St., and is brought before this court on *habeas corpus*, which is accompanied by a writ of *certiorari*, on which the proceedings before the commissioner have been certified to this court. There is no question but that the proceedings are in accordance with the provisions of section 1014. The only questions made are whether the offense charged is in law an offense under any valid law of Congress; and, if it is, whether there is any sufficient proof of the commission of such an offense by the relator to warrant his detention by these proceedings. The statute (section 5478) makes the forcible breaking or attempting to break into any post-office, or any building used in whole or in part as a post-office, with intent, etc., an offense. It is objected that the United States is not alleged nor shown to have title to this post-office; and that it is in a block, the rest and a large part of which is used for other purposes, so that there is no wrongful act shown against any property of the United States, and none but what would be an offense against the state and not against the United States.

It is not contended but that under the authority conferred by the constitution upon congress to establish post-offices and post-roads, is included the power to make depredations or attempts at depredation upon post-offices criminal offenses; but it is claimed that no power is given to make that an offense against the laws of congress which does not affect the government property or post-office at all, although done near to it. While it might be that there would be a lack of authority as to an offense against mere private property, although near to the government office, that defect would not be available here, for the testimony of the postmaster shows clearly an attack by some person on the post-office itself. This testimony of the postmaster supplies fully the want of evidence of the *corpus delicti* claimed in argument to be wholly lacking. There remains nothing but the claim that there is no sufficient evidence to warrant holding the relator for this offense. There is some evidence tending to show that he is the person who committed it. The sufficiency of this evidence is not open to review on this proceeding. *In re Stupp*, 12 Blatchf. 501. The commissioner is to judge of the sufficiency of the evidence, and while the relator is held according to his judgment upon any competent evidence he is not held in custody contrary to law.

The relator is remanded to the custody of the marshal, and the writ of *certiorari* dismissed.

THE EDWIN H. WEBSTER.

(District Court, S. D. New York. December 18, 1883.)

1. COLLISION—BURDEN OF PROOF—TUG AND TOW.

Where two steam-tugs, each with tows, have exchanged mutual assenting signals as to the mode in which they will pass each other, and a collision afterwards ensues, the libellant's tug having the other on her own starboard hand, the burden of proof is upon the libellant to show by a reasonable preponderance of evidence that the respondent's tug was in fault, and, failing to do this, the libel should be dismissed.

2. SAME—CASE STATED.

Where the tug *E. H. W.*, as she was leaving her slip in Brooklyn to go down the East river, sighted the tug *M.*, and each gave two whistles to the other, and the *M.* had the *W.* on her own starboard hand, and the question in dispute being whether the *E. H. W.* went beyond a reasonable distance away from the shore, near which by her signal she was bound to pass, held, on conflicting evidence, that it was not shown that the *E. H. W.* had gone out in the stream further than was reasonable, or so as to be in the way of the *M.*, and the libel was therefore dismissed. The tow not having sued her own tug, the question of the latter's fault not further considered.

In Admiralty.

Edward D. McCarthy, for libellant.

Beebe, Wilcox & Hobbs, for claimants.

BROWN, J. The libel in this case was filed to recover damages for injuries to the schooner *Deep River*, on the twentieth of September, 1880, by a collision in the East river off North Fifth street, Brooklyn, with the tow of the steam-tug *Edwin H. Webster*. The schooner was in tow of the steam-tug *Merkle*, and lashed upon her starboard side, and another schooner was lashed on the tug's port side. The *Merkle*, with her tow, was going up the East river at about 7:30 p. m., with a strong flood-tide. The *Webster* had in tow two scows, 160 feet long, one lashed upon each side, and was upon one of her regular trips from North Fifth street, Brooklyn, to the Erie Railroad docks, Jersey City.

The *Webster* had backed slowly out of the slip at North Fifth street, and swung around against the end of the upper pier as the flood-tide struck the stern of the scows. About the time she was thus straightened down the river, and close to the pier, the *Merkle* and her tow were seen coming up river a little above Grand street. The *Webster* signaled by two blasts of her whistle that she would pass to the left, or on the Brooklyn side, and received from the *Merkle* two assenting whistles in reply. In swinging up with the tide the *Webster* went mostly above the North-Fifth-street pier, and as soon as her bows had swung out somewhat from the pier her engines were started ahead under a slow bell only, so that she made against the strong flood-tide, according to the testimony of all her witnesses, not over half a length down by the pier, before she commenced backing on account of the near approach of the *Merkle*. As her bows were headed out somewhat, and the tide was running about four knots against her, she had worked gradually out into the river, though making scarcely any head-