partners, under the name of the Kosciusko Bank, as acceptors. The question is, can A. C. Jobes be sued in the same action, in a separate count, upon an individual undertaking in which neither of the other defendants are sought to be made liable. If in writing the letter upon which the promise is based he acted as a member of the banking firm, then he would be liable, if at all, by the promise made in the letter as a partner in the banking firm, and not as an individual. It is true that by the laws of this state all partnership contracts are both joint and several, and an action may be maintained against one partner upon a partnership contract as a several and individual obligation; and if the suit was brought against A. C. Jobes alone, upon the acceptance as a several and individual obligation, then I see no reason why the second count might not be joined in the declaration. But the general rule of pleading stated in Chit. Pl., and all the other elementary works on that subject, is that the joint action must be in favor of all as plaintiff, and against all as defendants, and that there cannot be united in one action a count against two or more, and in the same action a count against one of the defendants; and the high court of errors and appeals of the state, in the case of *Miller* v. *Northern Bank of Mississippi*, 5 George, (Miss.) 412, announced the same rule, which stands unreversed, so far I am informed. Under this rule I am of opinion that the demurrer to the second count must be sustained, with leave to the plaintiffs to amend their declarations if they shall be so advised.

UNITED STATES *ex rel.* SPINK.[1]

UNITED STATES *ex rel.* WILLIAMS.[1]

(*Circuit Court, E. D. Louisiana.* March 3, 1884.)

1. HABEAS CORPUS.
   Where parties have a right, under the laws of the United States, to pilot vessels in and out of the Mississippi river to the sea through South pass, although they are not duly licensed and commissioned branch pilots under the laws of Louisiana, to imprison them for exercising this right is to imprison them in violation of the laws of the United States.
2. SAME.
   The orders and writs of this court are issued under and by the authority of the laws of the United States, and when the affidavits against the relators were made in contempt of the restraining orders of this court, and the relators are imprisoned by virtue of such affidavits, they are imprisoned in violation of the laws of the United States.
3. SAME—JURISDICTION—REV. ST. 753.
   If relators are imprisoned in violation of the laws of the United States, this court, under section 753, Rev. St., has jurisdiction to issue a writ of *habeas corpus* to inquire into the cause of their detention, and upon the hearing it has jurisdiction, and it is its duty to discharge them.

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

Habeas Corpus.

E. Howard McCaleb, Joseph P. Hornor, and *F. W. Baker,* for relators.

James R. Beckwith, contra.

PARDEE, J. In our opinion these parties, Spink and Williams, have a right, under the laws of the United States, to pilot vessels in and out of the Mississippi river to the sea through South pass, although they are not duly licensed and commissioned branch pilots under the laws of Louisiana. It has been practically so decided by this court in *The Flynn Case,* the district judge presiding, at the November term, 1882, which case is now pending on appeal in the Supreme Court of the United States. To imprison them for exercising this right is therefore, in the opinion of this court, to imprison them in violation of the laws of the United States. We desire to express our great respect for the opinions and decisions of the supreme court of the state of Louisiana; and the opinion here presented in the case *Ex rel. Williams* v. *Livaudais,* 35 La. Ann. ——, lately decided, we have considered attentively; but as the question in controversy is one as to the proper construction of the laws of the United States, and of their force and effect, we feel bound to follow the adjudicated cases of our court, rather than the opinion of a state court, although of conceded high rank and authority in all questions of law. Further, in these present cases it appears that the affidavits upon which these relators have been arrested, and are now imprisoned, were made by several persons who are each defendants in certain equity cases now pending in this court, wherein this same right to pilot through South pass is involved, and wherein these persons have been severally restrained and enjoined, until the further orders of court, from making such affidavits and instituting such proceedings. The various orders and writs of this court are issued under and by authority of the laws of the United States. As the affidavits were made in contempt of the restraining orders of this court, and as the relators are imprisoned by virtue of such affidavits, it would seem from this view also that the relators are imprisoned in violation of the laws of the United States. If these relators are imprisoned in violation of the laws of the laws of the United States, this court, under section 753, Rev. St., has jurisdiction to issue a writ of *habeas corpus* to inquire into the cause of their detention, and, upon the hearing, it has jurisdiction, and it is its duty to discharge them.

BILLINGS, J., concurred.

UNITED STATES v. KELLER.

(Circuit Court, D. West Virginia. 1884.)

1. CRIMINAL LAW—PROVINCE OF JURORS.
   Jurors are not the judges of the law as well as the facts, but must take the law as given by the court.
2. SAME—INDICTMENT.
   Where each count in an indictment constitutes a distinct and separate offense, if one is found to be true the verdict must be "guilty," even though the jury finds against the other counts.
3. SAME—EVIDENCE—REASONABLE DOUBT.
   Preponderance of evidence against an accused party will not of itself warrant a conviction, but the jury must be satisfied beyond a reasonable doubt of his guilt as charged in the indictment.
4. MANSLAUGHTER—COLLISION—PROOF—MALICE—NEGLIGENCE.
   In trials for manslaughter, under the statute of the United States, making the officers of a steamer, in case of a fatal accident, liable to prosecution for that offense, it is not necessary to prove malice, provided negligence is proved, and a violation of the navigation laws, nor need it be proved that such negligence or violation were willful and intentional.
5. SAME—DEFINITION OF NEGLIGENCE.
   Negligence is the omission to perform some duty, or the violation of some rule, which is made to govern and control one in the discharge of some duty.
6. SAME—NAVIGATION LAWS—DUTIES OF PILOTS.
   In the event of there being no signal made on a descending steamer, as required by the navigation laws, or a signal made not understood on board of the ascending steamer, the latter must stop and not proceed again until the two steamers come to a complete understanding as to the course to be pursued.
7. SAME—RESPONSIBILITY OF PILOTS.
   If the ascending steamer fails to return the signal of the steamer descending, and chooses rather to make a cross-signal, the acceptance of this by the descending steamer does not excuse the pilot of the other for his first fault.
8. SAME.
   The wrongful act of the pilot of one vessel contributing to the accident does not justify the pilot of the other vessel for his neglect of duty.

For Manslaughter.

The case arose out of a collision between the steamers Scioto and John Lomas, in the Ohio river, between Mingo island and Indian Cross creek. The defendant was the pilot of the steamer Scioto, and was navigating his boat up the Ohio river on the fourth day of July, 1882, with about 500 persons on board. The John Lomas was at the same time coming down the river, also heavily loaded, but was much the smaller boat of the two, although much more strongly built than the Scioto. The boats came in sight of each other when they were about 1,200 yards apart, the Scioto being about Cross creek and the Lomas about the head of Mingo island. The defendant was indicted for manslaughter, under section 5344 of the Revised Statutes. The indictment contained four counts. The first count charged that the pilot of the John Lomas (his being the descending boat) blew one sound of his whistle for passing, by keeping to the right, when the boats were 900 yards apart; that the Scioto at the time this whistle