It follows, therefore, that the payment made must be allowed, and that the tender made at the time the answer was filed was sufficient. The libelant is entitled to the sum deposited in court, with costs to that time only, and the defendants should have costs thereafter.

THE ERIE BELLE.

(*District Court, E. D. Michigan.* February 19, 1883.)

ADMIRALTY PRACTICE—JURY TRIAL—REV. ST. § 566.

In admiralty causes of contract or tort, arising upon the lakes, if *either* vessel concerned in such action be of 20 tons burden and upwards, enrolled and licensed for the coasting trade, and employed in navigation between different states, either party to such action may demand a trial by jury, under Rev. St. § 566. But if *both* vessels be foreign, or engaged in trade between places in the same state, or the action be other than one of contract or tort, it seems that neither party is entitled to a jury trial.

In Admiralty. On motion to strike from claimants' answer their demand for trial by jury:

This was a libel for damages received by the schooner Lizzie Law, through the negligence of the tug Erie Belle, in towing her from Chicago to Buffalo. The answer alleged that the schooner was a vessel of 20 tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different states and territories upon the lakes and navigable waters connecting said lakes. It further appeared that the Erie Belle was a foreign vessel, and of course not within the above description.

F. H. Canfield, for libelant.

H. C. Wisner, for claimants.

BROWN, J. The Revised Statutes (section 566) enact that in causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of 20 tons burden or upwards, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different states and territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it. The history of this anomaly in our admiralty jurisprudence is found in the case of *Gillet* v. *Pierce*, 1 Brown, Adm. 553. In the case under consideration the vessel receiving the injury is within the description of the statute, but the offending vessel is not. The question is, upon which vessel can the cause or action be said to "arise or concern,"—the vessel receiving or the one doing the injury? So far as I know, no attempt has been made to answer this question, except by Judge CONKLING, in a note in his

work upon Admiralty Jurisdiction, vol. 2, p. 534, in which he says "that this definition is supposed, unquestionably, to embrace, in cases of collision, the injured vessel, and in cases of salvage, the salved vessel; but it seems to be not an unreasonable interpretation to consider it as embracing also the colliding, and the salving vessel." I am unable myself to see why, if two vessels are interested in a contract, or involved in a tort, the cause or action does not *concern* one of them as much as the other. It is no more important to the injured vessel that she should recover her damages than to the other vessel that she should not be compelled to pay them. In such cases *either* party is entitled, by the express terms of the statute, to demand a trial by jury. I doubt, however, whether the statute would apply at all to cases of pure salvage, as they are neither matters of contract nor tort, or to cases wherein both vessels are foreign, or engaged in foreign trade, or in trade between ports in the same state.

The motion to strike the demand for a jury from the answer must be denied.

FIRST NAT. BANK OF JEFFERSONVILLE, INDIANA, v. OHIO FALLS CAR & LOCOMOTIVE WORKS.

(*Circuit Court, D. Indiana.* January 9, 1884.)

ASSIGNEE OF PLEDGED SECURITIES—FORECLOSURE—ACCOUNTABLE TO ASSIGNOR. Where the pledgee of mortgage bonds assigns them as collateral security for a debt of his own, and the assignee, foreclosing against the original pledgeor without joining the assignor as a party, buys in the bonds himself, he is bound to account to the assignor for the bonds or their value, and not merely for the amount paid by him for them at the foreclosure sale.

The Ohio Falls Car & Locomotive Company is a corporation duly organized under the laws of the state of Indiana. It stopped payment in the month of October, 1873. At that time it owned certain real estate, buildings, machinery, etc., in Jeffersonville, Indiana, which were subject to a mortgage of $121,000. There had been executed to it by the Chespeake & Ohio Railroad Company divers notes, aggregating the sum of $262,767.11, secured by the pledge of 329 bonds, of $1,000 each, issued by the said Chesapeake & Ohio Railroad Company, and secured by a mortgage upon its property. Of these notes the Ohio Falls Car & Locomotive Company had discounted with the First National Bank of Jeffersonville, Indiana, $62,043.80, all of which it had indorsed. The said Ohio Falls Car & Locomotive Company had also borrowed from the Western Financial Corporation, the Bank of Kentucky, and J. W. Sprague, trustee, divers sums of money, aggregating the sum of $81,713.48, which it had secured by the pledge of the notes of the Chesapeake & Ohio Railroad Company to the amount of $89,636.42. The balance of the notes of the said Chesapeake & Ohio Railroad Company, amounting to $110,086.89, remained in the possession of the Ohio Falls Car & Locomotive Company. Of the bonds of the Chesapeake & Ohio Railroad Company, which had been pledged to secure their notes, a due proportion stood pledged for the notes so discounted by the First National Bank of Jeffersonville, and pledged to the Western Financial Corporation, the Bank of Kentucky, and J. W. Sprague, trustee. So that the First National Bank of Jeffersonville held as a pledge to secure the notes discounted by it 96 of said bonds, the Western Financial Corporation held 56, the Bank of Kentucky 14, Sprague, trustee, 27, and the company the remaining 139.

On the thirty-first day of October, 1873, the Ohio Falls Car & Locomotive Company made an arrangement with its creditors. This settlement provided, in its first and second sections, for certain debts which have since been fully paid, and need not be further noticed. By the third section it was provided as follows:

"That all parties who have discounted paper of the Chesapeake & Ohio Railroad Company, amounting in the aggregate to $62,043.80, and indorsed by the Ohio Falls Car & Locomotive Company, shall retain possession of said notes