932, and in the Real Press, described in Geiger's Handbuch der Pharmacie, published in 1830, vol. 1, p. 157.

The invention of Rosenwasser narrows itself down to the mode of charging the drug. Instead of filling the drug from the top of the percolating vessel, and then inserting a diaphragm, he turns the bottom of the vessel upwards, fills in the drug, inserts the diaphragm, and then turns the vessel back. To fill a vessel from the bottom instead of from the top, does not seem to me to constitute invention. The design of the patent laws is to reward those who make some substantial discovery or invention, which adds to our knowledge in the useful arts. *Atlantic Works* v. *Brady*, 107 U. S. 192; S. C. 2 Sup. Ct. Rep. 225. Not every improvement is invention; but to entitle a thing to protection it must be the product of some exercise of the inventive faculties, and it must involve something more than what is obvious to persons skilled in the art to which it relates. *Pearce* v. *Mulford*, 102 U. S. 112. These considerations are independent of the fact that in Beindorf's device, described in Geiger's work, *supra*, it appears that the percolating cylinder was inverted after filling. We do not think the complainants show the translation from Geiger, introduced by the defendant, to be incorrect. At all events, it may be said that the cylinder in the device of Beindorf might be charged from the lower end. There is also considerable evidence going to prove that a percolator embodying the Rosenwasser patent was used by one Nietsch, in New York, as early as 1873, and by the defendant Berry, in 1878, in his shop at Biddeford, Maine. In view of the other conclusions we have reached, it becomes unnecessary to decide whether this last defense has been proved. The bill must be dismissed; and it is so ordered.

THE SUE.

(*District Court, D. Maryland.* February 2, 1885.)

1. CARRIERS OF PASSENGERS—SEPARATION OF PASSENGERS ON ACCOUNT OF RACE OR COLOR.
   On a night steam-boat, plying on the Chesapeake bay, colored female passengers may be assigned a different sleeping cabin from white female passengers.
2. SAME—ACCOMMODATIONS MUST BE EQUAL.
   The right to make such separation can only be upheld when the carrier, in good faith, furnishes accommodations equal in quality and convenience to both alike.

In Admiralty. Libel *in rem.*

A. Stirling, Jr., and *Alexander Hobbs*, for libelants.

John H. Thomas, for respondent.

MORRIS, C. J. This suit (with three others of like character by other female libelants) has been instituted to recover damages on the

allegation that the libelant, who is a colored woman of unobjectionable character and conduct, and who had purchased a first-class ticket for a passage on the steam-boat Sue, in August, 1884, from Baltimore to a landing in Virginia, on the Potomac river, was refused proper first-class sleeping accommodations on board, and was in consequence compelled to sit up all night in the saloon, and experienced great discomforts. The answer of the claimants of the steam-boat alleges in defense that there was provided on board a sleeping cabin for white female passengers in the after part of the boat, and that a sleeping cabin equally good in every respect was provided forward, on the same deck, for female colored passengers, and that these libelants were told and well knew before they came on board that the regulations of the boat did not allow either class to intrude into the cabin of the other; that the libelants all refused to sleep in cabin provided for the colored female passengers, and preferred to remain sitting in the saloon all night rather than to go into it, claiming as matter of right to be allowed to go into the white women's cabin.

There are two issues raised: The first one of law, the libelants denying the legal right of the owners of the steam-boat to separate passengers for any purpose, because of race or color. The second is an issue of fact, the libelants denying that the forward cabin assigned to them was, in fact, equal in comfort and convenience to the after cabin assigned to white women.

In determining the question of law, it is to be observed that the steamer Sue is employed on public navigable waters, and plys between the port of Baltimore and ports in the state of Virginia, and that the regulations made by her owners and enforced on board of her, by which colored passengers are assigned to a different sleeping cabin from white passengers, is a matter affecting interstate commerce. It is, therefore, a matter which cannot be regulated by state law, and congress having refrained from legislation on the subject, the owners of the boat are left at liberty to adopt in reference thereto such reasonable regulations as the common law allows. *Hall* v. *De Cuir*, 95 U. S. 490. One of the restrictions which the common law imposes is that such regulations must be reasonable, and tend to the comfort and safety of the passengers generally, and that accommodations equal in comfort and safety must be afforded to all alike who pay the same price. The law of carriers of passengers in this respect is well stated in Hutch. Carr. § 542. He states the result of the decisions to be that, if the conveyance employed be adapted to the carriage of passengers separated into different classes according to the fare which may be charged, the character of the accommodations afforded, or of the persons to be carried, the carrier may so divide them, and any regulation confining those of one class to one part of the conveyance will not be regarded as unreasonable if made in good faith for the better accommodation and convenience of the passengers.

The precise question raised in this case, viz., whether a separ-

ation of passengers as to their sleeping cabins on board a steamboat, made solely on the ground of race or color, shall be held to be a reasonable regulation, has not to my knowledge been decided in any court. There have been cases arising from separations made in respect to day travel as to which there has been some conflict of views, and one or two cases have been cited in which such separations have been held unreasonable. *U. S.* v. *Buntin*, 10 FED. REP. 739, note; *Gray* v. *Cincinnati S. R. Co.* 11 FED. REP. 683, note. These differences of opinion, I think, may be explained, in part at least, by differences in the circumstances existing in different communities. It is, in my judgment, a mixed question of law and fact, and whenever it appears that facts do not exist which give reason for the separation, the reasonableness of the regulation cannot be sustained. But the great weight of authority, it seems to me, supports the doctrine that, to some extent at least, and under some circumstances, such a separation is allowable at common law, and I think it is not going too far to say that such is the decided leaning of the supreme court of the United States, as expressed in the opinion pronounced in *Hall* v. *De Cuir*. The supreme court appears to treat the question as one with regard to which reasonable usages which now exist, can only be controlled by legislation, and holds that if public policy requires such legislation, it must come from congress. It is the duty of all courts to declare the law as they find it to be, not as individual judges may think they would like it to be.

It has been urged by respondent's counsel that the evidence shows that explicit notice was given to the libelants when they bought their tickets, before going on board, that they would not be allowed to use the white women's sleeping cabin. As to this there is conflict of testimony; but the conflict is immaterial, for it is admitted by libelants that they well knew of the regulations from having, on previous trips on the same steam-boat, been denied access to the after cabin, and, of course, knowledge was equivalent to notice. But I think the whole issue is immaterial. The libelants paid full first-class price, and did not consent to any such regulation; and if the regulation was unlawful, they could not be held bound by it, even if specially indorsed on their tickets, and read to them. As to the reasonableness of this regulation I must decide upon the evidence in this case.

The steam-boat men called as witnesses testify that it is a regulation which has always existed on all the numerous night lines of steamers on the Chesapeake and adjacent waters. They give various facts to justify it, and declare that they are obliged to make it, in compliance with the demand of the great majority of their passengers. It must be admitted that a regulation, which a carrier may lawfully make, if reasonable, has strong argument in favor of its reasonableness if it is demanded by a great majority of the traveling public who use his conveyance. There was a time when every man on a railroad train who wanted to smoke assumed the right to do so in

every car except what was known as the "ladies'-car," but the demand of the majority of male passengers gradually compelled the enforcement of a regulation that there should be no smoking unless there was a car set apart for it. It has been argued that the constitutional amendments, which assured to colored people all the political rights of citizens of the United States and of the states, and were intended to forever obliterate color as a distinction with regard to political rights, of necessity made such a color discrimination unlawful in carriers as against the declared public policy of the nation. In view of the authoritative interpretations of those amendments, I cannot so hold. It is a question with which citizenship has but little to do. If it was found that naturalized citizens of English and of Irish birth, or the French and German nationality, interfered with such others' comfort, or with the discipline of the boat, when occupying the same sleeping cabins, the court might well find that a regulation which enforced separation between them was reasonable and therefore lawful. But to say that regulations based on differences of race or color may be lawful is not to say that every such regulation can be upheld. The regulation must not only be reasonable in that it conduces to the general comfort of passengers, but it must not deny equal conveniences and opportunities to all who pay the same fare. This discrimination on account of race or color is one which it must be conceded goes to the very limit of the right of a carrier to regulate the privileges of his passengers, and it can only be exercised when the carrier has it in his power to provide for the passenger, who is excluded from a place to which another person, paying the same fare, is admitted, accommodations equally safe, convenient, and pleasant.

This proposition of law, I am informed, was applied by my learned predecessor, Judge GILES, in a suit brought by a colored man who had been excluded from a street car. The street car company had arranged that every third or fourth car, and none other, should be exclusively for colored people, but Judge GILES held that this did not afford equal convenience to this class of citizens. And this leads to the important question of fact in the present case. The libelants testify that the forward cabin, which was assigned to their use, was offensively dirty; that the mattresses in the berths were defaced; that sheets were wanting or soiled, and that there were hardly any berths which had pillows; that there were no blankets and no conveniences for washing. They testify that from their own knowledge the white women's cabin was clean, pleasant, and inviting, and had none of these defects. They declare that on former trips they had found the forward cabin so intolerable that they sat up all night, and, finding it in the same condition this trip, they refused to remain in it, and being refused admission into the after cabin, again sat up all night. In these assertions they are supported by five other persons, all colored persons, to be sure, but respectable, and all having had similar opportunities of experience. They claim also that the ap-

proach to the stairway to the cabin assigned for their use was obstructed by cattle, and that there was no key with which their door could be secured, and that its location did not compare in comfort with the women's cabin aft. While allowing a good deal for the inflamed feelings of these libelants and witnesses, who all testify under feelings of resentment, I still am far from thinking that they have, in a reckless spirit of vindictiveness, made up this story from the whole cloth. Some things they complain of have been explained away. To a woman accustomed to a comfortable bed on shore, a night aboard ship is generally one of discomforts, and if the sufferer thinks that some one else has better quarters on board, from which she is unjustly excluded, there is no disposition to make the best of what has been provided. As to any material or necessary inferiority of location in respect to the forward cabin, I do not think the libelants' case is made out. With regard, however, to the degree of comfort and conveniences in the furnishing and cleanliness of the forward cabin, as compared with the after one provided for the white female passengers, notwithstanding the general denials of the officers of the boat, and perhaps their intention that there should not be any material difference, there is testimony which I cannot disregard.

Whatever the general orders of the agents and officers of the boat may have been in this respect, and however fair their general intentions, as declared by them, may have been, I am quite convinced that no disinterested person would have gone into the forward cabin in its actual condition in August, 1884, who had the option of the other one, quite irrespective of all questions of color or race. I think it was considered by the persons who actually attended to the forward cabin that less attention to it would suffice. It appears, too, that there was a stewardess to attend to the after cabin, and that she did not attend the forward one. The evidence of the ship's officers admit that there was a different system, in respect to this cabin, in giving out the bed-coverings. The reasons given by the officers for this different system, they justify by showing that the much greater number of second-class colored passengers who used this cabin, as compared with the smaller and more self-respecting second-class white persons who used the after cabin, made a different system necessary, and also made it much more expensive and difficult to keep the forward cabin clean. I have no doubt of the truth of this; but it is no legal justification for not giving as clean and convenient a sleeping place to a first-class colored passenger as is given on the same ship to a first-class white passenger. If a different system was necessary, for any reason, the first-class colored passenger should not be made to experience any difference in comfort on account of that system. It seems to me only reasonable that some proper attendant should offer to supply the things that were not in the cabin and which were always placed ready for use in the after cabin, and not that the passenger, on discovering the differences, should be obliged to hunt for,

and with difficulty supply, those things which the others had furnished to them without asking. The separation of the colored from the white passengers, solely on the ground of race or color, goes to the verge of the carrier's legal right, and such a regulation cannot be upheld unless *bona fide*, and diligently the officers of the ship see to it that the separation is free from any actual discrimination in comfort, attention, or appearance of inferiority. The right of the first-class colored passenger was to have first-class accommodation according to the standard of the after cabin on the same boat, and this, no matter what might be the difficulties arising from the greater number of second-class colored passengers. If it is beyond the power of the owners of the boat to afford this, then they have no right to make the separation. On many vehicles for passenger transportation, the separation cannot be lawfully made, and the right of steam-boat owners to make it depends on their ability to make it without discrimination as to comfort, convenience, or safety.

I pronounce in favor of the libelants, and will sign a decree for $100 in each case.

THE OLIVER.

(*District Court, E. D. Virginia.* January 10, 1885.)

1. COLLISION—FAIR-WAY.
   A fair-way, in the sense of the tenth rule of navigation, is navigable water on which vessels of commerce habitually move. As to vessels of light draught, it embraces water inside of buoys, where sail-vessels of light draught usually navigate, and not merely the ship-channel.
2. SAME—SCHOONERS—LIGHT—WATCH.
   A small schooner well loaded and lying deep in the water, with her stern up stream, in a line with the course of sail-vessels, and anchored in 12 feet of water, 125 yards inside of a buoy, with no light in the rigging and no watch on deck, was run into and sunk at 12 o'clock at night by another schooner sailing under a breeze from shore, as close to shore as practicable, all the latter vessel's crew being on deck, two of them in her bows, and no one seeing the schooner at anchor. *Held*, that the moving schooner was not, and that the one at anchor was, in fault.

In Admiralty, in a cause of collision.

The facts of the case sufficiently appear in the opinion.

J. A. Armstrong and *C. E. Stuart*, for libelant.

C. P. Meredith and *Thomas Johnson*, for respondent.

HUGHES, J. The schooner Mechanic was lying at anchor, when this collision occurred, in 11 or 12 feet of water, about two miles below Maryland Point, in the Potomac river, and about 125 yards inside the second red buoy below the Point. The place where she was lying is shown by the chart to be in a line drawn from the first of these buoys to the mouth of Nanjemoy creek. On this line the water is shown by the chart to be nowhere less than 8½ feet, and in much of the dis-

tance exceeds 15 feet, deep. When sail-vessels are running down the Potomac river under a stiff breeze from off the Maryland shore they hug the shore as nearly as practicable, and pass along the course indicated by this line. The schooner Mechanic was lying in the channel on this fair-way. The term "channel" sometimes refers to the current of a running stream, and means that part of the stream in which the current flows. But in tide-waters the term refers to the movement of vessels, and means that part of the water on which vessels move. A fair-way is water on which vessels of commerce habitually move. Buoys do not mark the limits of channel as to vessels of lighter draught. They are usually placed at the edge of that part of the channel in which the water is deep enough for vessels of large size, called the ship-channel. There is no law of navigation requiring vessels of light draught to move outside of buoys. The custom of sail-vessels of light draught is to get as near as practicable to the windward shore, and in doing so they habitually move inside of buoys. It is erroneous to speak of 10 or 12 feet of water, on which they habitually move, as *flats*. Nor are the sailing directions found in the official publications of the government laws of navigation. They are intended more especially for the guidance of masters who are unfamiliar with the waters described. They are advisory and not imperative as to vessels of light draught.

Capt. King, the master of the Mechanic, was familiar with the waters of the Potomac in the region of Maryland Point and Nanjemoy creek, and should have been familiar with the habit of the smaller class of sail-vessels, in coming down the Potomac under a stiff breeze from the Maryland shore, to run in tolerably close to shore. In anchoring his schooner in the course apt to be taken by such vessels, he took the risk of whatever might happen there through his fault. The tenth rule of navigation requires all vessels, when at anchor in roadsteads or fair-ways, to have a white light in the rigging, not more than 20 feet above decks, visible all around the horizon, and at a distance of not less than a mile. It was incumbent on Capt. King, when he anchored his schooner in the place which has been mentioned, to have such an anchor light in the rigging. His vessel was small, registered as of only 19 tons burden. He had 552 bushels, or 15 tons, of corn in the aft part of his hold, which put his stern deep in the water and brought his deck down close to the water. The tide was running flood, and his stern was thrown directly up stream in the course of vessels coming down the river, in such manner that they could not see his broadside. His sails being furled as he lay there, and the moon two hours high in the west, shining on his stern, and not casting a shadow behind it, he presented quite a small object to the vision of vessels coming from Maryland Point towards Nanjemoy creek. In anchoring in the probable course of such vessels, he took all the risks of accidents which might happen through his fault; for an admiralty court would not dare to set such

a precedent as to hold that if he had no anchor light up at such a place as the one described, he might recover damages for a collision. That would be setting a premium on acts inviting collisions. Under such a ruling, any man who had an old vessel too worthless to be insured, could get a price for her by putting her in a place where vessels were likely to sail, and, by leaving no light in her rigging at night, contriving to have her run over and sunk.

The schooner Wm. Oliver, of about 200 tons burden and five feet draught, was coming from Washington City under a strong wind from off the Maryland shore, and running in near shore on the night of the collision, which was the fifth of April. At about 12 o'clock or after, she came in collision with the Mechanic and sank her by running into her stern. Though the weight of testimony is that the Mechanic had an anchor light up as late as 11 o'clock, yet there is no evidence whatever that she had a light up at the time of the collision. The master of the Mechanic, and a colored man who was the only person with him on board, were at the time down in the cabin asleep. Capt. King was undressed and the negro partially so. The accident awakened them, and they were taken on board of the Oliver, the captain losing all his clothes but shirt and drawers. It is proved on the part of the Oliver that her entire crew, consisting of four men, were on deck; Capt. Jones, the master, being at the wheel, and the rest of the crew being in the starboard and port bows, or well forward. The mate was on the lookout. Three of this crew testified in the case, and all say that they did not see the Mechanic until the moment of collision, and that she had no light up. The witnesses of the libelants all say that the night was clear, that the moon was shining, and that objects on the surface of the water as large as boats could be seen at a considerable distance. The witnesses of the respondent say that there was a haze on the surface of the water at the time of the collision, and that objects could not be seen by them looking from the water towards the shore.

Two facts proved in regard to the Mechanic were—*First*, that she was 39 years old; and, *second*, that Capt. King, who was her owner, took no steps to get his vessel up after she was sunk, and manifested no concern for saving her, but allowed his vessel and her cargo to remain uncared for where they lay. Most of the rigging was saved, but this was more through the procurement of Capt. Jones than that of Capt. King. If the Mechanic had been anchored on the flats where vessels never passed, and had no light up, and the Oliver had, by any accident resulting from bad seamanship or fault, run over her, the case would have been different from that before us. The immediate cause of the accident would have been the unseamanlike act of the crew of the Oliver, and damages could have been awarded in spite of the want of a light on the Mechanic. Or, if the Oliver had seen the Mechanic where she lay without a light, and had not done all in her power to avoid a collision, then the last fault would have been the

Oliver's, and she would have been held responsible. Or, if the Mechanic had been tied up to a wharf and had been run into, the case would have been against the Oliver. Though it is better, even for vessels lying at wharves or out on flats, to have a light up, yet the absence of it would not excuse vessels running into them in such positions.

But the law of navigation which requires vessels lying at anchor *in a fair-way* to have a light up is imperative. It must be obeyed. It must be effectively obeyed. It will not do for the master to hang up a light after nightfall, and then go to bed, trusting to the moon to serve as a light, in the event that the winds or other cause shall put out the light. Obedience to this important requirement of law must be certain and unremitted. The master must know that the light is continually up. Conjecture will not do. When lying in a fair-way the anchor light must be known to be all the time up, and this cannot be with certainty unless a watch be kept on deck to keep it burning, and to be able to say positively that the light was up, in the event of a collision.

I do not know that there is any rule of navigation which requires a vessel at anchor to keep a watch on deck; but, rule or no rule, it is very careless for a vessel lying in deep water, in the course pursued by sailing vessels, not to have a watch on deck. See *The Sapphire*, 11 Wall. 164, and *The Petrel*, 6 McLean, 491. Her master, I repeat, must *know* that his light is up; and how can he know this himself, and how can he prove the fact to the satisfaction of a court, in the event he is struck by another vessel, unless he have a watch on deck to see that it does not go out? He assumes great risk if he neglects this precaution. The Mechanic has failed to prove that her light was up for an hour before and at the time of the collision. Lying, as she was, in a fair-way without a light, and presenting, as she lay, low down in the water, at midnight, but a small object to the vision of a vessel approaching her from her rear, she invited collision with no light up. The usual presumption of law, against the moving vessel, in favor of the one at anchor, is therefore reversed in this case, and the Mechanic must be held to have been in fault; for, to hold that a vessel lying where she was, without a light in the rigging or a watch on deck, was not in fault, would be to offer a premium for collision. Decree must be for respondent.

THE DREW, etc.

(*District Court, S. D. New York.* December 30, 1884.)

1. RIVER NAVIGATION—PASSING VESSELS—SWELL AND SUCTION.
A steam-boat passing in the vicinity of other craft in shallow water is bound to use all reasonable precautions to avoid doing them injury from the known suction and swell she causes. Other boats are also bound to avoid places dangerously near the usual track of such steamers.

2. SAME—CASE STATED.
The libelant's barge was moored along spiles near the eastern side of the Hudson, at Castleton, in shallow water, where the bottom was stony. The usual practice was to move such boats before the time of the passage of large steamers, but, having got aground, the libelant's barge could not be removed. The steamer D., coming down about 9 P. M., and perceiving signals by shaking lanterns and other evidence of difficulty ahead, slowed, but did not pass any further to the westward, which she might easily have done, and, when abreast of the barge, she resumed her former speed; and the suction and swell from her passing caused a break in the bottom of the barge. *Held*, that the D. was chargeable with fault in not doing all that was reasonably within her power to avoid doing injury, and that the barge was also in fault in being allowed to ground and remain in a place known to be dangerous; and the damages were therefore divided.

In Admiralty.

Hyland & Zabriskie, for libelant.

W. P. Prentice, for claimants.

BROWN, J. In May, 1883, the libelant's barge Greenback was moored about half a mile below Castleton along-side of three bunches of spiles about 20 feet distant from the bulk-head or dike which there forms the eastern shore of the Hudson river. During the day she had been loaded with ice, and had grounded so as not to permit of her being taken away by a tug, as was intended. About 9 o'clock in the evening the large steamer, the Drew, passed down in her usual course about 100 yards outside of the barge. The water being shallow, the considerable suction and swell accompanying her passage caused a sudden lifting and settling of the barge, enough to make a somewhat heavy shock. Ten minutes afterwards the barge was found rapidly filling with water, from which she sank. Subsequent examination disclosed two holes or breaks in her bottom a little forward of amid-ships. This libel was filed to recover the damages, charging that they were caused by the negligence and improper management of the Drew in passing. The evidence shows that the bottom where the barge was moored was not soft or even, but that some stones had been washed there from broken-down portions of the dyke a little above. It is possible, also, that there were some remains of the ends of broken spiles, though the evidence on this point is less conclusive. The stones, however, were sufficient to make it dangerous for the barge to lie with any considerable part of her weight resting upon the bottom. Had the water fallen low enough to cause a considerable portion of the weight of the barge with her cargo to rest