

more sensibly to that story than the other, in my judgment. The result of this consideration of the libelants' proof is the same as before, the cause of collision is precisely the same, the negligence the same, and the only difference between the two is that the situation as described by libelants is much more likely to have brought about the collision than the other. It accounts for it far more satisfactorily, and more clearly indicates the cause to have been that which it must also have been in the situation described by defendant. It is hardly necessary to say that in this view the Hebard is liable, and in some sense it is quite immaterial which may be found to have been the true relative situation of the vessels, whether that given by the defendant or by the libelants.

The decree will be as before ordered.

HUDSON RIVER CEMENT CO. v. THE EMPEROR and THE E. H. GARRISON.¹

(District Court, S. D. New York. May 5, 1891.)

COLLISION—STEAM-VESSELS MEETING—LOOKOUT—PROXIMATE CAUSE—EAST RIVER NAVIGATION.

The tug G., with a tow, was going down the East river about dusk. She had no lookout other than her pilot. A ferry-boat coming out of her slip crossed ahead of the tug's course, attracting the attention of her pilot, so that he did not see the plain E., which, with a tow, was coming up stream, about 150 feet off the piers, in plain sight of the G., and giving her repeated signals. The G. collided with the tow of the E. *Held*, that the failure of the G. to have a lookout was the cause of the collision, rendering the G. liable therefor; that the navigation of the E. near the shore, though contrary to the state statute, afforded such abundant time and space for avoiding collision as not to constitute a proximate cause of it, and was immaterial.

In Admiralty. Suit to recover damages caused by collision.

Goodrich, Deady & Goodrich, for libelants.

Carpenter & Mosher, for the Emperor.

Alexander & Ash, for the E. H. Garrison.

BROWN, J. The tug Garrison, in going down the East river about dusk on November 19, 1890, came in collision, a little above Catharine ferry-slip, with the libelant's barge Isabella, in tow along-side of the tug Emperor going up, about 150 feet only off the end of the piers. The account of the collision given by the pilot of the Garrison is that, as he was going down in about mid-river, a ferry-boat came out of the Roosevelt ferry-slip, which is immediately above the East River bridge abutment, and gave him a signal of one whistle, in obedience to which, he ported his wheel to go to the right; and that as the ferry-boat passed him

¹Reported by Edward G. Benedict, Esq., of the New York bar

she opened up under her stern the Emperor and her tow, so near to the Garrison that collision was then unavoidable. On examination I find it quite impossible to accept this theory of the collision on the ebb-tide. The collision could not have occurred where it did occur had the Emperor with her tow come up from below the ferry-boat as the latter came out from her slip. The men on the Emperor must also in that case have inevitably seen the ferry-boat, and several of their witnesses testify that no ferry-boat was seen. There can be no doubt that, if the ferry-boat came out at the time stated by the Garrison's pilot, she came out astern of the Emperor, and that the Emperor and her tow were all the time in full view, both lights and hulls, it not being yet dark. The Garrison had no lookout, and it is probable that the ferry-boat engaged all the pilot's attention, so that the Emperor and her tow were not noticed until quite near. The case is one of those in which the absence of a lookout proper on the tug, as required by law, becomes material. The omission of the lookout, though often immaterial, is always at the tug's risk. The Emperor twice gave timely signals to the Garrison, which were also unnoticed. There was plenty of time and space for the Garrison to have avoided running into the tow. At the collision she had changed her course about 10 points, and was heading 2 points up river. Though the Emperor was navigating near the New York shore, and not in mid-river, as required by statute, yet, as she was in plain view, and gave repeated signals in time, and as there was abundant space for the Garrison to have avoided running into her tow had any proper attention been given her, the fault is deemed that of the Garrison only; and the Emperor's navigation in the wrong part of the river is treated as not the proximate cause of the collision, and immaterial. *The Francis*, 44 Fed. Rep. 510, 512. Decree for libelant with costs as against the Garrison, and libel dismissed with costs as respects the Emperor.

CHICAGO, R. I. & P. RY. CO. v. DENVER & R. G. R. CO.

(Circuit Court, D. Colorado. December, 1890.)

1. RAILROAD COMPANIES—CONTRACT—ASSIGNMENT OF CONTRACT FOR USE OF ROADS.
A contract between the C., R. I. & C. R. Co. and defendant company, giving the former the right to use the latter's tracks, depots, etc., stipulated that the contract should be binding on the lessees, assigns, grantees, and successors of each company during the continuance of their franchises, and provided that the former company could assign its interest in the contract only by sale, lease, or consolidation of its own property. *Held*, that an assignment or conveyance by the C., R. I. & C. Co. of its interest in the contract by virtue of leases, sales, and consolidation of its property, carried with it all the rights of said company under the contract.
2. SAME—ESTOPPEL.
Where a railroad company which has granted to another company the right to the joint use of its track, depots, etc., allows the grantee and assignee of the latter to enter upon and continue in such possession and use, it is practically a construction of the power of the company to assign its rights under the contract.
3. SAME—CONSTRUCTION OF CONTRACT.
Complainant's assignor, being engaged in building a railroad from the east, with the intention of bringing it to Colorado Springs, or, possibly, direct to Denver, entered into a contract with defendant company for the use of its tracks, depots, etc., which provided that complainant's assignor should have the full, equal, joint, and perpetual possession and use of all defendant's tracks, buildings, stations, sidings, and switchings on and along its line of railway "between and including Denver" and South Pueblo, meaning and intending to include all its railway and appurtenant property "between and at the points aforesaid." *Held*, that the contract gives complainant the right to use the depot grounds and property of defendant in Denver for the handling of its freight and passenger business, without respect to the road over which it may haul its cars. HALLETT, J., dissenting.

In Equity.

Thomas F. Withrow, M. A. Low, and A. E. Pattison, for complainant.
E. O. Wolcott, J. F. Vaile, and G. W. Easley, for defendant.

MILLER, Justice. This suit is one brought in the chancery branch of the circuit court of the United States for this district by the Chicago, Rock Island & Pacific Railway Company against the Denver & Rio Grande Railroad Company. The object of the bill is to enforce certain rights which the Chicago & Rock Island Company, as I shall call it generally, claims to the use of what is called the "terminal facilities" of the Denver end of the road of the Denver & Rio Grande Railroad Company. The rights thus asserted grow out of a contract originally made between the Denver & Rio Grande Railroad Company and the Chicago, Rock Island & Colorado Railway Company. It concerned the use of the Denver & Rio Grande Railroad, which was then in operation between Pueblo and Denver—a distance of 120 miles almost, north and south—by the other company, which was being built from the east to connect with the Denver & Rio Grande Railroad at some point on this line. The construction of that contract is the subject-matter which we have to decide, and is the foundation of the difference between the two railroads,—I say between the two railroads; I mean the Chicago & Rock Island Railway Company, which claims to have become invested with all the rights concerning the matter now in controversy which the Chicago, Rock Island & Colorado Railway Company had by the original contract.