This case comes within that rule. It seems strange to say that the fact that the ship became a total loss by reason of the defendant's negligence prevents the libelants from recovering of the defendant freight which his ship would have earned but for her loss. I am aware that the adjudged cases are not in entire harmony upon the point under consideration, but I think the following cases, namely, *The Freddie L. Porter*, 5 Fed. Rep. 822; *The Canada*, Lush. 586; *The Consett*, 5 Marit. Law Cas. 34*n*; *The Star of India*, 1 Prob. Div. 466; *The Mary Steele*, 2 Low. 370; *The Belgenland*, 36 Fed. Rep. 504,—afford support for a decision, which appears to me to be the only just decision in this case, that the loss of the freight which the ship would have earned on the voyage from New York to Cadiz should be included in the recovery. The second exception taken by the libelant is therefore allowed, and the case will be referred back to the commissioner to ascertain and report the amount of loss actually sustained by the libelant by reason of having been prevented from performing the charter from New York to Cadiz, which had been executed on October 24, 1888. The other exceptions taken by the libelants are overruled, as are also the exceptions taken by the respondent.

THE MEDUSA.

THE M. E. STAPLES.

FLANNERY *v.* THE MEDUSA.

CENTER *v.* THE M. E. STAPLES.

(*District Court, E. D. New York.* May 22, 1891.)

COLLISION—STEAM AND SAIL—PLEASURE YACHT—DUTY OF STEAM-VESSEL.

A steam-vessel is under the same obligation to avoid a sailing yacht as any other vessel under sail.

In Admiralty. Suit to recover damages caused by collision.

Hyland & Zabriskie, for the M. E. Staples.

Julian B. Shope, for the Medusa.

BENEDICT, J. At the time of the collision which gave rise to this action the sloop yacht Medusa and the tug M. E. Staples were proceeding down the New York bay above the Narrows, on crossing courses. The yacht, being a sailing vessel, had the right to hold her course, and it was the

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

duty of the tug, being a vessel under steam, to avoid her. Both vessels held their courses until collision was imminent, indeed inevitable, without prompt action on the part of the tug. The liability of the tug for the collision is plain, and it is equally plain that the yacht was guilty of no fault. The collision is easily explained by circumstances proved, which go to show that the tug acted upon the idea that because the tug was a vessel engaged in business, while the Medusa was a pleasure yacht, and able to change her course easily, it was the duty of the yacht to give way for the tug. This was a mistaken idea on the part of the tug. Pleasure yachts, while subject to, are also entitled to act upon, the rules of navigation. There was nothing in the situation of these vessels to create an exception to the ordinary rule of navigation by which it is made the duty of a steam-vessel to avoid a vessel under sail. The tug had a single boat in tow on a hawser 100 feet long. She could, by stopping, have given the yacht room to pass without collision. She could by a slight change of her helm have removed all danger of collision. She was in possession of the power to avoid approaching vessels, and that is the basis of the rule of navigation, and I discover nothing in the proofs upon which to pass a decision that she was relieved from the rule. Therefore, by the navigation rules, the yacht had the right to hold her course, and it was the duty of the steam-vessel to avoid her, and this duty was in no way modified by the fact that the vessel she was approaching was a pleasure yacht, able to alter her course without much trouble or loss. The libel of the owner of the tug is therefore dismissed, with costs, and, in the case of the owner of the yacht, a decree will be entered in favor of the libelant, with an order of reference to ascertain the amount of the damage.

McNULTY v. CONNECTICUT MUT. LIFE INS. CO. *et al.*

(*Circuit Court, N. D. Iowa, E. D.* June 11, 1891.)

1. REMOVAL OF CAUSES—APPLICATION.
   Where, in an action on an insurance policy, it appears that the policy was assigned by the insured to a third person, who assigned it to one of the parties to the action, a petition for removal on the ground of diverse citizenship, which fails to show the citizenship of such third person, is not sufficient to warrant removal.
2. SAME—SEPARABLE CONTROVERSY.
   In an action brought by an administratrix against an insurance company upon a policy of insurance on the life of her intestate, in which one claiming the policy as assignee is made a party defendant, the controversy between the administratrix and the assignee, on the one side, and the company on the other, is single.

At Law. Motion to remand.

George H. Barnes and *Powers, Lacy & Brown*, for plaintiff.

Henderson, Hurd, Daniels & Kiesel, for defendants.

SHIRAS, J. From the transcript of the record now on file in this court the following facts are gleaned: On the 16th day of November, 1868, Henry T. McNulty, then a resident of Dubuque, Iowa, took out a policy of insurance on his life in the Connecticut Mutual Life Insurance Company, in the sum of $10,000, payable to the said McNulty, his executors, administrators, or assigns, in 90 days after due notice of and proof of the death of said assured. On the 9th day of July, 1878, Henry T. McNulty in writing assigned this policy to Duncan & Waller as security. Subsequently, but without date, Duncan & Waller assigned the policy, and all claim under it, to Edward W. Duncan. On the 13th day of April, 1890, said McNulty died, and Mary A. McNulty, his widow, was duly appointed administratrix of his estate by the proper court in Dubuque county, Iowa. The present action was brought by said administratrix to the January term, 1891, of the district court of Dubuque county, the insurance company and Edward W. Duncan being made defendants, the claim against the company being upon the policy of insurance, and, as against the defendant Duncan, it is averred that he claims to hold the policy as security for certain sums advanced to pay the premium on said policy during the life-time of said Henry T. McNulty, the amount of which the administratrix cannot determine; and it is therefore prayed that said Duncan be required to establish what, if any, claim he has for which he holds said policy as security, and that the amount of the respective interests in said policy as between the administratrix and said Duncan be established, and judgment entered accordingly. Section 2547 of the Code of Iowa provides that "any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved in the action, except as otherwise provided by law;" and it was under the provisions of this section that Duncan was made a defendant to the present action. At the January term, 1891, of the state court the defendant company