

THE PANAMA.<sup>1</sup>

## CHESAPEAKE &amp; O. RY. CO. v. THE PANAMA.

(District Court, E. D. New York. May 21, 1891.)

COLLISION—STEAM-VESSELS MEETING—ATTEMPT TO PASS STARBOARD TO STARBOARD—  
ASSENT.

Two steam-vessels, the P. and the K., were meeting head on. The P., determining to pass starboard to starboard, blew two whistles, and starboarded, without waiting for the assenting whistle of the K. On perceiving that the K. had not starboarded also, the P. again changed her wheel, and attempted to pass port to port, but the vessels collided. *Held*, that the P. was in fault for attempting to pass contrary to rule, without awaiting the assent of the other vessel.

In Admiralty. Suit to recover damages caused by collision.

*Jas. S. Stearns* and *George A. Black*, for claimant.

*Chas. H. Tweed* and *R. D. Benedict*, for libelant.

BENEDICT, J. I am unable to discover any ground upon which the Panama can be relieved from responsibility for the collision which gave rise to this action. If the movements of the Kanawha were as testified to by those who directed her movements, the liability of the Panama is conceded; and, if the movements of the Panama were as testified to by those who directed her movements, and the movements of the Kanawha were as testified to by these same witnesses, a similar result must follow; for the case sought to be made by the Panama is this: The steam-ship Panama and the steam-ship Kanawha were approaching nearly head on, upon opposite courses. The law required the vessels to pass port to port. The Panama determined to pass starboard to starboard. Accordingly she blew a signal of two whistles to the Kanawha, and, without waiting for the assent of the Kanawha, starboarded her wheel, and swung to the eastward. Soon she observed that the Kanawha, instead of starboarding her wheel, had ported. The Panama then ported, but it was too late to avoid collision. This makes a case of fault on the part of the Panama. Contrary to the rule, she starboarded her helm, and swung to the eastward, without any assent from the Kanawha to that method of passing. Not receiving assent, she changed again, and ported, but then it was too late. The time lost in the attempt to pass starboard to starboard made the porting, when it occurred, too late to avoid collision. The libelant must have a decree, with an order of reference.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

## SOWLES v. WITTERS.

(Circuit Court, D. Vermont. May 27, 1891.)

## FEDERAL COURTS—JURISDICTION—FEDERAL LAWS.

The laws of a state respecting the enforcement of judgments, adopted, pursuant to Rev. St. U. S. § 916, by a rule of the federal district court for the government of judgment liens of such court, and for the guidance of the marshal in levying executions, derive their force from the United States, and not from the state; and a suit involving the question whether or not the marshal's proceedings in levying an execution issued out of the federal court was in conformity with such rule is a question arising under the laws of the United States, and cognizable by the federal courts.

In Equity. On motion to remand.

*Edward A. Sowles*, for oratrix.

*Chester W. Witters*, for defendant.

WHEELER, J. This suit was brought in a court of chancery of the state, to relieve the title to land which had been attached and levied upon by the marshal, and sold to the defendant on processes of this court, and attached and levied upon by a sheriff on processes of a state court against the same defendant, and sold to the oratrix, from the cloud created by the marshal's proceedings, which are alleged to be defective for irregularities in them. It has been brought into this court as arising under the laws of the United States, and now been heard on a motion to remand it to the state court. Section 916 of the Revised Statutes of the United States has provided that a party recovering judgment in these courts—

"Shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the state in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such courts."

These proceedings of the marshal upon the execution were similar to those provided by a law of the state enacted in 1884, which was adopted by the eleventh of the general rules adopted by this court at the May term, 1885. They could be had only in similarity with those of the state law in force when section 916 was first enacted, which was in 1872; or with those enacted by the state afterwards, which had been adopted by general rules of the court. *Lamaster v. Keeler*, 123 U. S. 376, 8 Sup. Ct. Rep. 197. A case arises under the laws of the United States whenever the right of a party, whether plaintiff or defendant, depends upon a correct construction of them, in whole or in part. *Tennessee v. Davis*, 100 U. S. 257. The foundation of the case of the oratrix as made by her bill of complaint is the failure of the marshal to follow the laws of his guidance in his proceedings. Whether he has so followed those laws or not depends upon a correct construction of them. The decision upon this motion must depend upon the question whether they are laws of the United States, or of Vermont. The marshal was an officer of the United States, the execution was a process of the United States, and a natural