

ing around, and becoming so imbedded with sand as to render it impossible to pull her off. Other vessels at or near the same place had suffered the same fate. Besides, she was pounding quite heavily, and was making more water than usual. There was danger, therefore, that her cargo, consisting of nitrate of soda, would, at least to some extent, get wet, and become ruined or greatly damaged.

The court will also take into consideration the fact that the services of the libelants' boats were rendered promptly and effectively, as well as the fact, shown by the evidence, that the libelants maintain a fleet of five powerful and well-equipped tug-boats for the purpose, not only of towage, but of assisting vessels in distress; that at night one of them is always "on watch," with steam up, ready to start at a moment's notice, and the others lie with banked fires, and can be got ready and under way in from 10 to 15 minutes. The value and expense of maintaining those of libelants' tugs that rendered the services here in question have already been stated; that of the remaining two of their fleet does not clearly appear, but from the testimony it seems probable that it is not less than that of the *Reliance* and *Alert*. It also appears that some of the libelants' tugs are sometimes sent to sea in search of vessels in distress, at heavy expense, and without receiving any reward. This fact it is also proper to consider in making an award for the services rendered in the present case; but it must not be overlooked that the *Don Carlos* was not wholly dependent upon the tugs of the libelants, for those of the Ship-Owners' & Merchants' Tug-Boat Company were at hand, and could have been availed of. The court is disposed, as admiralty courts always are, to make the award liberal, but I think, in view of all the facts and circumstances of the present case, that \$5,500 is a liberal award for the services rendered by the libelants, over and above \$225 for the services of the *Reliance* in staying by the bark during the night of July 10th. For these amounts, with costs, a decree will be signed for libelants, the amount of which to be apportioned among the ship, freight, and cargo, in proportion to their respective values, as above stated.

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THE GEORGE E. STARR.

WASHINGTON STEAM-BOAT & TRANSP. CO. *v.* THE GEORGE E. STARR.

(*District Court, D. Washington, N. D.* August 31, 1891.)

I. COLLISION—BETWEEN STEAMERS—FOG—EXCESSIVE SPEED.

The steamer S. came into collision with the steamer A., striking her port paddle-box, breaking the timbers, tearing the shaft from its bed, and forcing it several feet aft. Though there was a dense fog at the time, and the S. was aware of the A.'s proximity, having heard and answered her signals to pass port to port, she proceeded at her usual speed of nine miles an hour until the A. became visible through the fog, when she ported her helm and reversed, but without avail. *Held*, that the S. was in fault for this collision.

2. SAME—LATERAL MOTION UNDER PORT HELM.

The contention of the S. that the collision was caused by the A.'s action in putting her helm hard a-port while going ahead, so as to swing her stern to port, which forced her laterally on her center against the stem of the S., is untenable, as being contrary to natural philosophy.

3. SAME—STOPPING IN FOG—FAULT.

The situation of the A.—in a dense fog, with the S. approaching from ahead, but invisible—being one requiring extreme caution, in which the rules of navigation require a vessel to slow up or stop in order to avoid the possibility of collision, it cannot be held that stopping was a fault, though it in fact materially contributed to bring the vessels together.

4. SAME—GOING AHEAD INSTEAD OF ASTERN.

But the A. was in fault for going ahead as soon as the S. hove in sight, though she did it with helm hard a-port, so as to swing to starboard, and present the timbers of the paddle-box as a fender to the approaching blow; for by going astern, as the rules of navigation require in such a situation, under a starboard helm, she would have swung the same way, and equally have presented such fender to the S.

In Admiralty.

*R. S. Greene*, for libelant.

*Thomas Burke*, for claimant.

HANFORD, J. On the morning of the 16th of March, 1889, in a dense fog, the side-wheel passenger steamer *George E. Starr* collided with the side-wheel passenger steamer *Eliza Anderson*. Both vessels were engaged at the time as carriers of passengers and freight on the route between Seattle and Whatcom, via Utsalady, Coupeville, and other intermediate points; and the two vessels are similar to each other as to size, speed, and build, the Starr being a newer vessel than the Anderson, and somewhat superior to her in size, speed, and power. The collision occurred between Utsalady and Coupeville, from two to three miles from Utsalady, and from one-quarter to three-quarters of a mile from Dimmock point, called also "Rocky Point." The latter name is commonly used by steam-boat men, and is a true characterization of said point. At the time of the collision the Anderson was going towards Coupeville, from Utsalady, and the Starr was on the opposite course. The libelant is the owner of the Anderson; and brings this suit to recover damages resulting from the collision, charging that the same was due entirely to a fault on the part of the Starr. The owner of the latter boat answers, denying the allegations of the libel, and pleading as a defense and counterclaim that the collision was caused by the fault of the Anderson. It is clearly shown by the evidence that the stem of the Starr came in contact with the timbers forming the outer frame and support of the Anderson's paddle-box, on her port side, just forward of her shaft, with sufficient force to break the timbers, tear the shaft from its bed and fastenings, and move it several feet aft, showing that the Starr ran into the Anderson on an oblique line to the latter's keel, and that the vessels, before colliding, must have approached each other end to end, or nearly so. In arriving at my conclusion that the Starr was in fault for this collision, and responsible, at least in part, for the damages caused thereby, I consider only the fact of the collision, the manner in which the vessels came together, the force of the blow as shown by the result, and the testimony given in behalf of the respondent, and from said facts and evi-

dence it is clear to my mind that the Starr was being run at her ordinary rate of speed, which is about nine knots per hour, to the moment of coming in sight of the Anderson, at which time the vessels were so near together that it was difficult, if not impossible, to avoid a collision with serious results. The master of the Starr knew of the approach of the Anderson, of her near proximity, and signals to pass port to port had been exchanged between the two vessels, and repeated several times, before they became visible from each other through the dense fog. The signals given and responded to required the Starr to pass between the Anderson and Rocky point. The situation was one demanding extreme caution, and the rules of navigation are imperative requiring a steamer under such circumstances to moderate her speed, and even to stop, in order to avoid the possibility of a collision. Revised International Regulations, art. 18, 23 U. S. St. 441; *The Catalonia*, (Dist. Ct.) 43 Fed. Rep. 396; *The Lehigh*, (Cir. Ct.) Id. 597; *The North Star*, (Dist. Ct.) Id. 807; *The Nacoochee*, 137 U. S. 330, 11 Sup. Ct. Rep. 122. The Starr was not stopped, and, as before stated, she continued to go ahead at her ordinary rate of speed, and was not under command, so that she could be stopped, until it was too late to avert the disaster. Although denied by her master, these damaging facts are shown by the testimony of her other officers, who were called as witnesses in behalf of the respondent. The testimony of the engineer and assistant engineer is to the effect that the signal bells were given in about this order: First, the slow bell, and within the period of about half a minute afterwards the bells to stop, followed immediately by the signal to reverse. Robert McMillan, who was in the pilot-house, acting as wheelsman, testified to the effect that all on board the Starr were startled by the sudden appearance of the Anderson through the fog. On his direct examination, in answer to the question, "Did you hear the captain say anything or make any remark as the Anderson hove in sight?" he answered: "Yes, sir. Just as the Anderson hove in sight, Captain McAlpine told me to put the wheel hard a-port. He says, 'By —, she is right into us,' and he almost went out of the window."

The master of the Starr insists that the injury to the Anderson was not caused by the Starr running into her, but by the maneuver of the Anderson. He claims that by putting her wheel hard a-port, with her engine driving ahead, so as to swing her stern to port, the Anderson was forced laterally upon her center against the stem of the Starr, and so damaged herself by force of her own motion. This theory is not supported by, but is contrary to, natural philosophy. A demonstration of its fallacy is to be found in the failure of the Starr to move laterally towards the Anderson. The evidence shows that her wheel was suddenly and quickly put hard a-port, when she was going ahead with greater speed than the speed of the Anderson. Although her engines were reversed, she continued to go ahead with great momentum until the collision; and there could be no force which would cause the Anderson to move as Capt. McAlpine asserts, different or greater in degree than the force created by the maneuver of the Starr.

It is claimed that the Anderson was in fault by being out of her proper position on her course from Utsalady to Coupeville, and that she was too near to Rocky point, and that she did not allow enough room for the Starr to pass in safety. The evidence, however, does not show clearly the exact position of the vessels, nor the distance from the place of collision to Rocky point, and I am therefore unable to find that the charge is sustained by proof.

It is claimed, in the next place, that it was a fault on the part of the Anderson to stop as she did, instead of proceeding, after the signals to pass to port had been exchanged; that by stopping instead of going forward she misled the master of the Starr, so that when he came in sight of her she was lying across his path, when she should have been a sufficient distance away to have cleared. The testimony shows that the stopping of the Anderson did in fact contribute materially towards bringing the vessels together, and shows that, if the Anderson had kept under way, the collision could not have occurred; but while this is so I cannot condemn as a fault the act of the master of the Anderson in stopping his vessel, for in doing so he obeyed a rule of navigation which the authorities above cited hold to be imperative.

A more serious charge against the Anderson is made in the answer in this: that instead of reversing her engines and backing at the time the Starr came into view, she went ahead. That she did go ahead instead of backing is expressly admitted by the master of the Anderson in his testimony. The rules of navigation require that when two vessels under steam come together, as in this instance, both must reverse their engines and back. If this rule had been observed by the master of the Anderson, but little, if any, damage could have resulted from the collision, and possibly there would have been no actual contact. The excuse given for failure to comply with the rule on the part of the master of the Anderson is that he believed that the only way to prevent the Starr from striking the hull of his vessel in such a way as to sink her was to go ahead, as he did, with his wheel hard a-port, swing to starboard, and so present the timbers of the paddle-box as a fender to receive the blow. But the excuse is insufficient. The vessel was under command, and by placing her helm in proper position and going astern she would have swung in exactly the same way, so that her timbers would have served as a guard, if the effort to avoid the collision proved ineffectual. It was not necessary for the Anderson to go ahead for the purpose claimed; she could have been protected in the same manner by going astern. As both vessels were in fault, the damage resulting must be divided between them. The case will therefore be referred to a commissioner to take further proofs, and to ascertain and report the amount of damage sustained by each vessel, and upon the coming in of the report a decree will be entered in accordance with this opinion.

## GOODNOW v. LITCHFIELD.

(Circuit Court, D. Iowa, C. D. May, 1832.)

## REMOVAL OF CAUSES—COLORABLE ASSIGNMENT—PETITION.

A petition for the removal of a cause alleged that the plaintiff, a citizen of the same state with defendant, was only a nominal party; that the claims sued on belonged to a corporation of another state, which assigned them to plaintiff by an instrument requiring him to collect them, and hold the proceeds "in trust for the use and benefit of the parties owning the same." *Held*, on motion to remand, that while this does not conclusively show that the assignment was merely colorable, yet the cause should be retained, with leave to plaintiff to plead that he was a *bona fide* trustee to sue and collect, and distribute the proceeds to numerous parties equitably entitled to share therein, on proof whereof the cause would be remanded.

At Law. On motion to remand the cause to the state court.

*Geo. Crane*, for complainant.

*Gatch, Wright & Gatch*, for respondent.

McCrary, J. This case is before the court on a motion to remand. The defendant petitioned the state court for a removal on the ground that the complainant, Goodnow, is only a nominal party, and that the controversy is between the defendant, a citizen of New York, and the Dubuque & Sioux City Railroad Company, a citizen of Iowa. It appears from the record that the claims sued upon were originally the property of the said railroad company, and that they were assigned to the plaintiff by an instrument in writing. By that instrument the plaintiff was to use and exercise reasonable diligence to enforce said claims, demands, or rights of action, and, after deducting all costs and expenses in so doing, to hold the proceeds or amounts collected "in trust for the use and benefit of the parties owning the same."

The complainant and defendant are citizens of the same state, while the original parties were citizens of different states. The case, therefore, was removable alone upon the theory that complainant is a nominal party only, and that the court can look to the controversy between him and the railroad—the assignor of the claims—to determine the question of the right of removal. As a general proposition, it is well settled that the joining in a suit of merely nominal parties can have no effect either in conferring or excluding jurisdiction. *Browne v. Strode*, 5 Cranch, 303; *Wormley v. Wormley*, 8 Wheat. 421; *Wood v. Davis*, 18 How. 467; *Foss v. Bank*, 1 McCrary, 477, 3 Fed. Rep. 185. It is equally well settled that, as a general rule, trustees and executors do not belong to that class, but are regarded as active parties to the controversy,—as parties to the contract, whose duty it is to prosecute or defend suits arising upon it, and whose citizenship is looked to as determining the question of jurisdiction. *McNutt v. Bland*, 2 How. 9; *Knapp v. Railroad Co.*, 20 Wall. 117. If the complainant in the present case is a trustee, within the ordinary meaning of the term, appointed in good faith to collect the claims sued on, and to pay the net proceeds to the parties who may be entitled to the same, then the court must look to his citizenship, and not to that