

THE PARTHIAN.

THE FLORENCE.

(District Court, D. Massachusetts. September 29, 1891.)

COLLISION—STEAM AND SAIL—FOG-HORNS.

As the steamer Parthian was proceeding northward 50 miles off Sandy Hook, in a thick fog, she heard prolonged blasts resembling those of a steam-whistle on her port bow, and, supposing them to be made by a vessel under steam, slowed down to half speed, and gave two blasts on her whistle, as a signal that she would direct her course to port, and pass on the starboard side. Receiving two short blasts in return, she put her helm hard to starboard, and as she was falling off repeated her signal, which was answered by a single blast. She thereupon threw her wheel hard to port, and reversed her engines full speed astern, but shortly afterwards collided with a sailing vessel. The sounds made by the latter were produced by an instrument blown by steam from a boiler carried in the hold. Held, that the use of such an instrument, instead of the usual atmospheric horn, rendered the sailing vessel solely in fault.

In Admiralty. Libel by the owners of the schooner Florence against the steamer Parthian for damages for a collision. Libel dismissed.

E. P. Carver, for the Florence.

L. T. Dabney and *F. Cunningham*, for the Parthian.

NELSON, J. This collision occurred on the 16th of July, 1890, at 8 o'clock in the morning, in a thick fog. The place of the collision was 55 miles S. E. by E. from Sandy Hook. The steamer Parthian, of the Boston & Philadelphia Line, was on one of her usual trips from Philadelphia to Boston. The schooner Florence was bound on a voyage from Bangor to Philadelphia, with a cargo of ice. The wind was light from the north-west. As the Parthian was proceeding on her course to the northward, enveloped in the fog, the men in charge heard on the port bow prolonged blasts, repeated at frequent intervals and coming nearer, resembling blasts made by a steam-whistle, which they took to be the fog-signals of a vessel under steam. The steamer was thereupon slowed down to half speed, and two short blasts were made with her whistle, as a signal that she would direct her course to port, and pass the approaching vessel on her starboard side. Receiving in reply two short blasts, and deeming this to be an acceptance of the proposal indicated by her signal, that the vessels should pass starboard to starboard, her wheel was put hard to starboard. As she was falling off to port under her starboard wheel her signal was repeated, and receiving back a single blast only, her wheel was thrown over hard to port, and her engines stopped and reversed full speed astern; but before she could be stopped the schooner Florence appeared out of the fog crossing the Parthian's bows from starboard to port. Nothing more could be done to prevent a collision, and she struck the Florence on her port side just aft of her main rigging. The sounds which the men on the Parthian had mistaken for the fog-signals of a steamer proved to have come from

the Florence, and were made by a huge copper horn blown by steam supplied from a steam-boiler on board. She had no atmospheric horn on board, but carried instead this instrument blown by steam, to be used for signaling in a fog. The evidence is clear that the sound produced by it closely resembled that of some varieties of whistles used on steam-vessels, and was so similar as to be extremely likely to deceive and mislead those hearing it at a distance, especially in a fog. The men on the Parthian were completely deceived, and none of them, from master to passengers, had the least suspicion that the sounds heard on the port bow were not the fog-signal of a steamer.

There can be no doubt that the course pursued by the Parthian was the usual and proper one under the circumstances, if the Florence had been a vessel under steam instead of a sailing vessel. Nor can there be any doubt on these facts that the disaster happened solely through the fault of those in charge of the Florence in making fog-signals by means of an instrument not sanctioned by the sailing rules. It was plainly her duty to give notice of her presence in the fog by a horn blown by atmospheric pressure, and not by blasts from an instrument closely resembling a steam-whistle. Her horn was substantially a steam-whistle, such as belongs to a vessel under steam, and which a vessel under sail has no right to sound in a fog. The men in charge of the Parthian were not to blame for maneuvers based upon the theory that the approaching vessel was a steamer, and as they fell into this error through the fault of those in charge of the Florence, their excuse is complete. In the cross-libel of the owners of the Parthian against the Florence, an interlocutory decree is to be entered for the libelants, and the libel of the owners of the Florence against the Parthian is to be dismissed with costs. Ordered accordingly.

CONN *et al.* v. CHICAGO, B. & Q. R. Co.

(Circuit Court, S. D. Iowa, W. D. November 13, 1891.)

1. REMOVAL OF CAUSES—ASSIGNMENT OF CLAIM—CITIZENSHIP—EXCESSIVE FREIGHT CHARGES—CHOSES IN ACTION.

A claim against a railroad company for overcharges in freight is not a "chose in action," within the meaning of the provision of the removal act of 1888 that the circuit court shall not have cognizance of a suit on "any promissory note or other chose in action" in favor of an assignee, unless such a suit might have been maintained if no assignment had been made; and an assignee of such claims may sue a non-resident company thereon, without regard to the citizenship of his assignors.

2. SAME—RESIDENCE OF RAILROAD CORPORATIONS—CONSOLIDATION—CONVEYANCE OF ROADS.

When a non-resident railroad corporation purchases and receives conveyances of all the roads in the state owned by a domestic corporation, the fact that it establishes agencies in the state, and operates the roads under the laws thereof, does not make it a domestic corporation, so as to take away its right to remove to a federal court an action brought against it in the state court by a citizen of the state. *Fitzgerald v. Railway Co.*, 45 Fed. Rep. 812, distinguished.

At Law. Action by J. W. Conn against the Chicago, Burlington & Quincy Railroad Company for overcharges in freight, the claims having been assigned to him by the original owners. On plea in abatement to the jurisdiction and the evidence thereon. Plea overruled.

Alanson Clark and Clark Varnum, for plaintiffs.

Smith McPherson, for defendant.

Before SHIRAS and WOOLSON, JJ.

SHIRAS, J. This action was brought originally in the district court of Mills county, Iowa, and was thence removed to this court upon the application of the defendant corporation, on the ground of diverse citizenship, it being averred in the petition for removal that the plaintiffs, when the suit was brought, and ever since, were, and have continued to be, citizens of Nebraska, and the defendant was and is a corporation created under the laws of the state of Illinois. The petition in the action contains a large number of counts, each one being based upon an alleged overcharge for freight shipped over the defendant's line of railroad by a number of individuals or firms, whose claims for damages for such alleged overcharges have all been assigned and transferred to the plaintiffs.

The first question arising upon the record is whether, under the statute now in force, an action based upon assigned claims of this kind can be removed from a state to the federal court, regardless of the citizenship of the assignors of the claims, or whether it is necessary, to sustain the jurisdiction, that it appear on the face of the record that the assignors of the claims, as well as the assignees, are, and were when the suit was brought, citizens of a state or states other than that of the defendant. The proviso in the amendatory act of August 13, 1888, is that the United States circuit court shall not—

"Have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable