The amount claimed by the libelant as compensation for his injuries is $3,000. If the steam-ship had been solely in fault this would be a reasonable claim. I shall divide this amount, and award him $1,500.

The only testimony on behalf of the steam-ship is the depositions of the master and mate, taken at Beaufort, S. C., to which port the steamer had gone for a cargo. The depositions were taken on September 22d, under a notice served on libelant's proctor, in Baltimore, on September 19th. This was not a reasonable notice, as it did not allow sufficient time for the libelant to be represented at the examination and to cross-examine the witnesses. The depositions were returned to this court and opened on September 25th, and upon motion of the libelant's proctor the hearing of the case was set for October 22d. The motion to suppress the depositions was not made until the hearing. Under the circumstances, I hold that the motion to suppress was made too late, and I have considered the depositions. The testimony of the master and mate is very guarded and formal, and not sufficient to affect my mind on the question of the unsuitableness of the winch for the purpose to which it was put. I will sign a decree for $1,500 and half the costs.

The Transfer No. 5.

Norwich & N. Y. Propeller Co. *v.* The Transfer No. 5.

(*District Court, S. D. New York.* January 22, 1892.)

Collision—Lights—False Assumption of Course—Change of Course—Crossing Bows without Answer to Signal.

The tug Transfer No. 5, with a car-float along-side, had come up the East river at night, and was in the east channel of Hell Gate, in the neighborhood of the Astoria ferry, and was about 150 feet from the Long Island shore. The steamer Delaware, coming west, rounded Hallet's point, and went down the east channel. Seeing the green light of the tug, she hastily assumed that the tug was crossing towards Horn's hook, blew two whistles, and, without waiting for an answer, starboarded. The tug stopped, slowed, and reversed, but the float and the Delaware came in collision. *Held*, that the collision was solely due to the Delaware's fault in changing her course, and running into the tug's water on her own signal, without waiting for an answer, and on a false assumption as to the tug's course, which she made at her own risk.

In Admiralty. Suit to recover damages caused libelant's steamer by collision with a float in tow of the Transfer No. 5.

Carpenter & Mosher, for libelant.

Page & Taft and *Robert D. Benedict*, for claimant.

Brown, District Judge. About 3 o'clock in the morning of June 9, 1891, the tide being ebb, as the steam-tug Transfer No. 5 was proceeding eastward through the easterly channel of Hell Gate near the Astoria shore, having a car-float loaded with cars lashed to her port side and

projecting ahead of her about 75 feet, the float came in collision with the libelant's steam-propeller Delaware coming westward, striking the latter upon her starboard side about 20 feet from her stem, and inflicting considerable damage, to recover which the above libel was filed.

There is some dispute as to the precise place of the collision; otherwise, there is less contradiction than usual in collision cases. I find the following facts:

(1) The collision was about abreast of, and not below, the small point on which a derrick was located, about half-way between the Astoria ferry and Hallet's Point light, and was within, or along, the margin of the eddy, which upon the ebb-tide makes up along the Astoria shore, extending out from 50 to 150 feet from the shore.

(2) The tug had come up through the southerly channel by Blackwell's island and had passed quite near the Astoria ferry for the evident purpose of obtaining the benefit of the slack-water or upward current of the eddy near that shore, instead of going out in the channel where the tide would be about four knots against her.

(3) The Delaware was a small steamer, about 126 feet long, and of 8½ feet draught; she passed Negro point about two or three hundred feet from the shore, shaped her course nearly due west so as to pass about the same distance from Hallet's point, then swung to port to go down the easterly channel in her usual course at this stage of the tide, that is, about one-third the distance across to Flood rock, or about 200 or 250 feet from the Astoria shore. When she got straightened down the east channel so as to head for the Blackwell's Island light, and being about abreast of Hallet's point, or a little below it, she first saw the tug's green light, and her vertical lights indicating a tow, a little on the Delaware's port bow, and estimated their position to be a little below the Astoria ferry within 150 feet of the shore, and judged them to be bound for the Harlem river by way of Horn's hook and designing to cross the course of the Delaware to the westward. On this assumption the Delaware gave a signal of two whistles, and without waiting for any answer starboarded her wheel so as to haul a point to port, and head a point towards the Astoria shore, which brought the tug's green light a little on the Delaware's starboard bow; she received no immediate answer, and heard no whistle from the tug, until she had got about 700 feet below Hallet's point, when she did hear a whistle or whistles from the tug, then about 200 feet distant, and replied with two whistles, put her helm hard a-starboard, and reversed; but the vessels were then too near to avoid collision.

(4) At collision the tug and the Delaware were both heading somewhat towards the Astoria shore; the Delaware's bow was within the eddy so as to be carried round to the northward towards Hallet's point, and in that direction she rounded and afterwards went down river by the northerly, or main ship channel.

(5) The red light of the Delaware was seen from the tug a little on her starboard bow before the former had rounded Hallet's point. The tug thereupon gave her a signal of one whistle, which was not heard by the

Delaware; but after an interval somewhat longer than usual for answering, a signal of two whistles was heard from the Delaware, which was understood by the tug as an answer, and which I find to be the signal given by her when abreast of Hallet's point or a little below it. The tug, which had previously reduced her speed to slow, thereupon reversed until collision, having given several whistles in the mean time.

(6) When the Delaware gave her first signal of two whistles, the tug was not below or abreast of Astoria ferry, but within 100 or 200 feet of the small point on which the derrick is situated, and within the eddy, or the margin of the eddy; she was then heading a trifle off the Astoria shore, just enough to clear the derrick point, and consequently showed her green light to the Delaware; and afterwards, in order to keep close to the shore and in the eddy, she hauled to starboard under a port wheel so as to show her red light shortly before the collision.

Upon these facts I find the Delaware to be alone in fault for the collision. The Delaware had no right to assume that the tug was going across to Horn's hook. She was not at all in the position in which the Delaware's witnesses now say they thought her to be, but far nearer to the Delaware. In the situation where the tug was, so near the Astoria shore and so much above the Astoria ferry, she could not rationally be supposed to intend going by Horn's hook; and the mere fact that she showed her green light was no indication whatever that she was designing to go that way, and was in no way incompatible with her design to pursue her usual course towards the Harlem river by way of the east channel. In acting on the contrary assumption, if such is the fact, the Delaware acted at her own risk. The tug was so near the shore that it was her right and duty to keep there on the starboard side. It was not to be supposed that the Delaware would attempt to run in between her and the shore. Even under the common rules, the Delaware, having the tug on her port hand and seeing the tug's green light, but very near the shore, was required to "keep her course." Had she done so, there would have been no collision. The collision was caused solely by her change of course to port and running across the tug's bows and into her water under a signal of two whistles without waiting for any answer or permission to do so, and upon the false assumption which she made at her own risk.

The tug is without fault, because as soon as apprised of the Delaware's move to port under her starboard wheel, she reversed; and she could not otherwise have avoided collision.

APPOLOS *et al.* *v.* BRADY *et al.*

(Circuit Court of Appeals, Eighth Circuit. February 8, 1892.)

1. INDIAN TERRITORY—ADOPTION OF ARKANSAS STATUTES—FOLLOWING ARKANSAS DECISION.
   In construing the statutes of Arkansas which were extended over the Indian Territory by Act Cong. May 2, 1890, the federal courts will follow the decision of the supreme court of that state.
2. ASSIGNMENT FOR BENEFIT OF CREDITORS—CONSTRUCTION OF DEED.
   In determining whether a given instrument is an assignment for the benefit of creditors, under the law of the Indian Territory as adopted from Arkansas, the test is, according to the settled rule of Arkansas decisions, whether it was the intention of the parties to divest the debtor of the title, and to make an appropriation of the property to raise a fund to pay debts.
3. SAME.
   Under this rule an instrument conveying property to a trustee, empowering him to take possession, sell at private sale, pay certain debts from the proceeds, together with all expenses, and then to turn over the remaining property and proceeds to the grantor, is an assignment, since no equity of redemption is reserved.
4. SAME—PAROL EVIDENCE.
   While it is proper, in determining whether a given instrument is an assignment for benefit of creditors, or merely a mortgage, to show the intention of the parties by parol evidence of their situation, and of their acts in connection with the transaction, yet they themselves cannot be allowed, as against third persons, to testify as to what they had in mind when executing the paper.
5. SAME—VALIDITY.
   In the Indian Territory an assignment for the benefit of creditors is void when the trustee is directed to sell at private sale, and when no bond is filed, as required by the Arkansas statute.

In Error to the United States Court in the Indian Territory.

Action by J. B. Brady, D. C. Brady, and W. H. Brady, commenced by attachment, against A. M. Means and J. S. B. Appolos, intervener. Verdict and judgment sustaining the attachment. Defendants bring error. Affirmed.

W. O. Davis, for plaintiffs in error.

A. Eddleman and *A. C. Cruce*, for defendants in error.

Before CALDWELL, Circuit Judge, and SHIRAS and THAYER, District Judges.

SHIRAS, District Judge. The defendants in error brought an action at law in the United States court in the Indian Territory against A. M. Means to recover the amount due upon a draft drawn upon and accepted by him, and caused a writ of attachment to be issued and levied upon certain articles of personal property. The defendant below traversed the facts relied upon as grounds for the issuance of the attachment, and one J. S. B. Appolos intervened in the cause for the purpose of asserting his rights to the attached property, based upon a written instrument executed to him as trustee, and which he averred was in fact a mortgage given to secure the claims of the firms named therein, to whom A. M. Means was indebted. The case went to trial before the court and jury upon these issues, with the result that the attachment was sustained, and the claim of the intervener was defeated on the ground that the instrument under which he claimed the attached property was an assign-