Titan struck the ebb-tide of the East river, which was running strong. In rounding the Battery from the North river into the East river, after a vessel has proceeded through the eddy between the tides of the two rivers at that point, upon encountering the ebb-tide of the East river on her port bow, it swings her off to starboard, unless such a movement is counteracted by putting the vessel's wheel to starboard. When the vessels were three or four hundred yards apart the Titan had passed through the eddy, and was heading against the tide on a course about parallel with the ends of the piers; and the Frances had approached, in the mean time, somewhat nearer to the New York shore. At that time the vessels were approaching each other end on, or nearly so, and the Titan put her wheel to port. She was about to signal the Frances with one whistle, when the Frances signaled the Titan with two whistles, indicating her intention to pass the Titan and her tows starboard to starboard, and shaped her course to port. The Titan promptly answered the Frances' signal with two whistles, and hard a-starboarded her wheel, and stopped. She had swung somewhat to starboard under the influence of her port wheel, and, owing to the force of the tide on the port tow, did not recover under her starboard wheel, but kept swinging to port. The Frances proceeded on her course to port until she was within two or three hundred feet of the Titan, when it was apparent that the sheer of the Titan was so serious that a collision was imminent, whereupon the Frances signaled again with two whistles, and altered her course still more to port, but apparently could not do so sufficiently within that distance, against the ebb-tide on her port bow, to avoid collision; and the car-float, which was on the starboard side of the Titan, came in contact with the starboard side of the Frances just aft of the forward gangway.

We think there was no fault on the part of the Titan. When her wheel was put to port the vessels were approaching each other end on, or nearly so; and, under the eighteenth rule of navigation, it was the duty of the vessels to pass each other port to port. The Frances, however, desired to pass starboard to starboard. At the time her proposition to do so was made, and assented to on the part of the Titan, the vessels were sufficiently far apart to permit of their passing starboard to starboard if each of them had governed her own movements properly. The Titan did all that she could to co-operate; but the Frances, not anticipating the sheer of the Titan, did not at first alter her course sufficiently to port to make allowance for it, and, when she altered her course still more to port, it was too late. We think the Frances, in attempting to depart from the statutory rule, took the risk of her ability to pass safely on the starboard hand of the Titan. Of course, by assenting to the proposition of the Frances for a departure, the Titan undertook, on her part, to do nothing unnecessarily to embarrass the maneuver of the Frances. She fulfilled her obligation; and although, had it not been for her sheer to starboard, there would not have been a collision, she was not in fault for the sheer, because she did everything in her power to counteract it. The decree is affirmed.

In re COE *et al.*

(*Circuit Court of Appeals, First Circuit.* March 16, 1892.)

APPEALABLE ORDERS—REMANDING CAUSE—CIRCUIT COURT OF APPEALS ACT.

The provision of the judiciary act of August 13, 1888, that no appeal shall lie from an order of the circuit court remanding a cause to a state court, was not repealed by the act creating the circuit court of appeals, (26 St. at Large, p. 826,) which, in section 6, gives it jurisdiction to review all "final decisions" of the circuit courts, "unless otherwise provided by law," and in section 14 expressly repeals all acts inconsistent therewith, since such an order is not a "final decision," within the meaning of the act, and, even if it should be so considered, the act forbidding the appeal has "otherwise provided."

Petition by Ebenezer S. Coe and David Pingree for a writ of *mandamus*. Denied.

Harry G. Sargent, *Oliver E. Branch*, *Henry Heywood*, and *Everett Fletcher*, for petitioners.

Frank S. Streeter and *Sanborn & Hardy*, opposed.

Before COLT, Circuit Judge, and WEBB and CARPENTER, District Judges.

CARPENTER, District Judge. This is a petition for a writ of *mandamus* to be directed to the Hon. THOMAS L. NELSON, presiding in the circuit court for the district of New Hampshire, requiring him to allow an appeal to this court from an order remanding to the supreme court of the state of New Hampshire the bill in equity between these petitioners on the one side and the Mount Washington Railway Company and others on the other side. The appeal was disallowed, on the ground that by the judiciary act of August 13, 1888, no appeal lies from the decision of a circuit court of the United States remanding a cause removed thereto from a state court. That act provides that, "whenever any cause shall be removed from any state court into any circuit court of the United States, and the circuit court shall * * * order the same to be remanded, * * * no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed." 25 St. at Large, p. 435. The petitioners contend that this provision is repealed by the act establishing this court, (26 St. at Large, p. 826.) That act, after defining the cases in which appeals are to be allowed to the supreme court, provides in section 6 that "the circuit courts of appeals * * * shall exercise appellate jurisdiction to review * * * final decision in the * * * existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law;" and in the fourteenth section, that "all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act are hereby repealed."

The petitioners argue that the decision of a circuit court remanding a cause to a state court was, at the time of the passing of the last-named act, a final decision, because it was a decision from which no appeal