

The answer of No. 13 states explicitly that "as soon as the green light and staff lights were seen, a signal was given;" and all agree that no signal was given until after the ferryboat had crossed. If the pilot of No. 13, moreover, intended to be understood as saying in his subsequent testimony that he saw not only the two white lights, but also the green light of the Buffalo 1,000 feet or more out in the river, and before the ferryboat passed, this would convict No. 13 of gross fault in not signaling to the Buffalo and her tow when they were recognized so near, and so plainly involving risk of collision. Although signals are often unreasonably delayed, I am not willing to believe that in the case of heavy floats like these, where the need of a signal when the vessels are first seen only a thousand feet distant is so imperative, a signal would have been omitted by the pilot of No. 13, had he seen the Buffalo's green and staff lights before the ferryboat crossed. I conclude, therefore, that neither pilot saw the colored light of the other until after the ferryboat had passed, because the colored lights were not visible, through the obscuration caused by the pilot house of the barge on the port side of No. 13.

For this obscuration No. 13 was responsible, and she must take the risk of navigating in that condition of her lights, and of her tow; because it was in violation of the rule of navigation that requires lights to be visible for 10 points around the horizon. *The Seacaucus*, 34 Fed. Rep. 68, 70. No fault being established against the Buffalo, the libel as to her must be dismissed with costs; and a decree entered against No. 13, with costs, with an order of reference to compute the damages, if not agreed upon.

THE BUFFALO.

CLARK v. THE BUFFALO.

(District Court, S. D. New York. May 13, 1892.)

COLLISION—VESSEL AT ANCHOR—FOG—MOVING STEAMER—NEGLECT TO MAKE SOUNDINGS.

The schooner R. was at anchor in the usual anchorage ground in President roads, Boston harbor, in a dense fog, and was properly ringing her bell. Held, that the R. was entitled to recover the damages occasioned by her being run into by the steamer B., which was slowly moving across the anchorage ground for deeper water, at least 1,200 feet out of the ordinary course of such steamers, there being no difficulty, if, as alleged, the compass was unreliable, in ascertaining her position in the fog by soundings, which the steamer had neglected to make.

In Admiralty. Libel for collision. Decree for libelant.
Owen, Gray & Sturges, for libelant.
Foster & Thomson, for claimants.

BROWN, District Judge. At a little before 3 o'clock in the morning of August 23, 1892, the libelant's schooner Luther A. Roby, while lying at anchor in President roads in the harbor of Boston, was run into by

the steamship Buffalo, in a dense fog, and her bowsprit broken, her headgear carried away, with other damage, for which the above libel was filed.

The Buffalo was outward bound; the weather was clear at a little past 2 A. M. when she left her dock, but in about 20 minutes after she had got around and headed upon her course, she ran into a dense fog, when at Castle island, where the channel is narrow and does not furnish suitable anchorage ground. She, therefore, continued on slowly in the first of the ebb tide, sounding her fog whistle and intending soon to come to anchor. No bell was heard from the schooner, nor was the schooner seen until she was within one or two hundred feet of the Buffalo, when her masts appeared first in the lighter fog above, a very little on the Buffalo's port bow, and too near to avoid collision. The Buffalo's engines were thereupon put ahead half speed, and her helm hard aport, which probably prevented greater damage by enabling her to clear the schooner's hull.

For the claimants it is contended that as no bell was heard, none was properly rung upon the schooner. One man, the night watch, was alone on deck. The testimony, no doubt, shows that when the steamer's approach was recognized by him, he rang the bell more continuously and noisily than before, so that several men below came speedily on deck; some, a little time before collision, and others, at the moment of collision. But the fact that several of them were thus roused and came up before collision, shows that the master of the Buffalo and others are mistaken when they claim that no bell was rung until *after* collision. If, as they say, they did not *hear* any bell before collision, the reason why they did not heed or notice it must be sought in some other circumstance than that the bell was not rung. The explicit testimony of the lookout that he had been previously ringing the bell at proper intervals, is confirmed by several witnesses on board the schooner; and the fact that he did recognize the steamer's approach at some little distance, and did then ring the bell continuously and violently, is proof that he was attentive to his duties.

The pilot of the steamer, on the other hand, testified that he was about to anchor. He says:

"We intended anchoring about where the stern of this schooner was. We had taken it up. I says: 'We cannot proceed. We have got to anchor. I have got to get a couple of lengths further to the eastward before we can anchor in order to get more water.'"

The hands were already forward to attend to this. Among the different causes that might prevent the schooner's bell from being heard or noticed, partial preoccupation of the mind by other duties is certainly not to be excluded. I cannot find from the testimony that the schooner's bell was not properly rung.

The schooner was at anchor in a usual and proper place, and her bell was properly rung. The steamer is, therefore, legally bound to pay the damage she caused, unless it resulted from inevitable accident. *Steam-Ship Co. v. Calderwood*, 19 How. 241, 246; *The Granite State*, 8 Wall.

310; *The Louisiana*, Id. 164, 173. The circumstances do not justify the finding of inevitable accident. The real cause of the collision is found in the fact that the steamer was, and for some time had been, considerably to the southward of the usual and proper course, whether in leaving the harbor, or in search of anchorage ground for such a vessel. The schooner had come to anchor in $3\frac{1}{2}$ fathoms of water, between Spectacle and Castle islands, probably about $\frac{1}{4}$ of a mile S. E. by S. of black buoy No. 7. The steamer drew $22\frac{1}{2}$ feet of water forward, and she could not anchor safely where the schooner lay. In going further to the south-eastward to get a proper depth of water, as was doubtless the pilot's intention, he had no business to be running, as he was, across anchorage ground in fog at least 1,200 feet to the southward of the ordinary course of such steamers in going between buoy No. 7 and the "Lower Middle." *The Middletown*, 44 Fed. Rep. 941.

I find it difficult to understand fully the account given by the pilot of his course. That he made some attempt, however, to correct his false position, is clear. If there was difficulty, as he intimates there was, in steering by compass, as the steamer was an iron ship and light, there was no difficulty in determining the proper line of her course by soundings between Castle island and the Lower Middle; and soundings would have made clear that he should be more to the northward. This alone is sufficient to prevent the collision from being treated as an inevitable accident.

There is considerable difference in the estimates of the speed of the Buffalo at the time of collision. Mr. Limerick, who was near the steamer's port rail as the broken bowsprit went past him, estimates the time at "not more than ten or fifteen seconds" between the first blow and the second, which were 90 feet apart; and that the bowsprit drew astern along the port rail at about a walking speed. Both these estimates would indicate a speed at that time of about $3\frac{1}{2}$ knots. It is unnecessary, however, to comment further upon the testimony on this point, as I cannot find the schooner in fault, or the accident inevitable.

Decree for the libellant, with costs.

STAYTON MIN. CO. v. WOODY *et al.*

(Circuit Court, N. D. California. May 9, 1892.)

1. FEDERAL JURISDICTION—VALIDITY OF RAILROAD GRANT—ADVERSE HOLDING.

In ejectment, plaintiff claimed title under a railroad land grant, alleging as ground of federal jurisdiction that defendants denied the validity of the grant. The pleadings and evidence showed that defendants not only asserted the validity of the grant, but themselves claimed title through one holding under the grant. *Held*, that the action must be dismissed for want of jurisdiction.

2. SAME—PLEADINGS.

An allegation by defendants that G., their predecessor in interest, at a certain time was holding the premises in controversy adversely to S., plaintiff's predecessor in title, who held under the railroad grant, there being no allegation that G. or his successors were so holding adversely to S. at the time the action was brought, was insufficient to show a holding adverse to the grant.

At Law. Action of ejectment by the Stayton Mining Company against M. F. Woody and others. Dismissed for want of jurisdiction.

Joseph D. Redding, for plaintiff.

Carroll Cook, J. E. Foulds, and William Hoff Cook, for defendants.

MCKENNA, Circuit Judge. This is an action of ejectment. To justify the jurisdiction of the court the plaintiff alleges that it derives title under an act of congress passed July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific coast," (14 U. S. St. p. 292,) and that defendants deny the validity of said act of July, 1866. The defendants, in a preliminary answer, not only directly traverse this allegation, but expressly admit the validity of said act of July, 1866, and, fortifying the answer, allege further a contract of plaintiff with one Griffen, whose successors they allege they are, by which plaintiff agreed to convey to him the title which it should receive from the Southern Pacific Railroad Company, and which it was negotiating for at the time of said contract. The plea of defendants was referred on the 14th day of September, 1891, to S. C. Houghton, Esq., described as a master in chancery, to report his conclusions thereon. The master took testimony, and reported February 8, 1892, "that defendants' plea is good." The plaintiff excepts to the report on the ground that the master's conclusions are not justified by the evidence, and defendants move for its confirmation and a dismissal of the action, and for costs. The parties have stipulated in writing waiving a trial by a jury. I have carefully considered the pleadings, argument of counsel, and the testimony, and concur with the master "that defendants' plea is good," and that this court has no jurisdiction of the action. The evidence shows that the defendants rely for defense not by denying the validity of the act of congress of July 27, 1866, but by asserting its validity; not by denying the title of the Southern Pacific Railroad Company, dependent on said act, but by claiming that title through an agreement with their predecessor in interest, one Griffen. But plaintiff's counsel says defendants claim to hold possession of part of the premises under a mining claim, and ad-