der the statute, are not entitled to a *per diem* for the time occupied in traveling to and from the place of trial. The excess of the *per diem* taxed, amounting to the sum of $25, will accordingly be corrected. No direct adjudication on this question having heretofore been made in this circuit, it may be proper to state that the conclusion above reached is concurred in by Circuit Justice BROWN and Associate Circuit Judge TAFT, and is intended to prescribe the rule for the proper taxation of witness fees in such cases.

THE JAMES BOWEN.

THE GEO. E. WEED.

TITUS *v.* THE JAMES BOWEN.

MURPHY *v.* THE GEO. E. WEED.[1]

(District Court, E. D. Pennsylvania. September 27, 1892.)

1. COLLISION—CUSTOM OF PORT.
   The established custom of the port of Philadelphia that on the Delaware river, between League island and Walnut street wharf, at ebb tide, vessels passing up shall keep inshore, and vessels passing down shall keep in channel, supersedes regulations prescribed by the sailing rules prescribed by the act of 1885.
2. SAME—NEGLIGENCE—SIGNALS.
   A vessel signaling that she is going westward of a vessel meeting her head on, which is answered by the latter with a signal that she will go to the eastward, is not negligent, although her proper course originally was to the eastward.
3. SAME.
   A vessel meeting two vessels which are substantially together, and which must necessarily both pass to the same side of her, may announce her intended course to both by one signal.

In Admiralty. Libel by W. H. Titus, master of the tug Geo. E. Weed, against the steamer James Bowen, to recover damages for collision, and cross libel by Augustus Murphy, master of the tug James Bowen, against the tug Geo. E. Weed. Decree against the Bowen.

Lewis & Tilton, for the Geo. E. Weed.

Biddle & Ward and *Rochefort & Stanton*, for the James Bowen.

BUTLER, District Judge. The suit is for collision. The material facts are as follows: On the afternoon of September 20, 1891, the Weed, a small tug, was passing up the western side of the Delaware river (well over) from League island to Walnut street wharf in company with another tug, the Ben Hooley. The latter was a few yards behind, probably a length, and slightly nearer the shore. The tide was ebb. When passing Greenwich piers the Bowen was seen coming down, about three

[1]Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

quarters of a mile above, also on the western side, but slightly eastward of the Weed's course. A little later the Ben Hooley signaled the Bowen of her purpose to pass westward, by blowing two whistles, to which the latter replied with two, and immediately the Weed rejoined with an equal number. The Bowen turned slightly eastward, and the Weed and Hooley slightly westward. Soon after, and when near the Weed, the Bowen altered her course to westward, and ran into and sank her. At this time the Weed was nearly, if not quite, across the Hooley's bows and very near her. Other vessels were passing up the river, most of them over eastward, and none between the Weed and Bowen after the signals were given. Among these vessels was the Goodnow, which was over to the east. It is a well established custom of the locality where the collision occurred, that vessels going up with an ebb tide, shall keep in shore, on either side of the channel, so as to avoid the current's force, and those passing down shall keep well out in the stream. This statement disagrees, materially, with the respondent's theory of the case, which is that the Weed was shut off from the Bowen's view by the Goodnow, until near at hand, when she suddenly came out from behind the latter's stern and ran westward across the Bowen's bows, rendering the collision unavoidable. This theory is, however, in direct, irreconcilable conflict with the clear weight of the direct testimony on the subject. It is denied by all disinterested witnesses who saw the vessel (and they are numerous) and is supported only by those in charge of the Bowen, and responsible for her conduct. A vessel did come out from behind the Goodnow, but it is clearly proved that she was not the Weed. The respondent's proctor candidly admits that the weight of direct testimony is against him; but he thinks surrounding circumstances show it to be unreliable. I do not agree with him respecting the effect of these circumstances. It is unnecessary to discuss them, but I may say in passing that while he thinks it virtually impossible to believe that the Bowen turned westward across the Weed's bows, as the libelant's witnesses testify, it seems to me no more difficult of belief than his contention that the Weed ran westward from a safe position behind the Goodnow, across the respondent's bows, thus inviting the destruction which overtook her. Admitting the facts to be however, as above found, the respondent still contends that the Weed is alone responsible for the collision because, *First*, it was her duty under such circumstances to pass the Bowen eastward; *second*, she was wrongfully on the western side of the channel; and, *third*, on failing to receive a reply to her whistles it was her duty to reverse and sound danger signals, which she did not. The first point is predicated on the supposition that the vessels were meeting virtually head on. As I have found this was not exactly their position, but granting it was, the fact is unimportant in view of the respondent's signal that she was going eastward, and the Weed's that she was going westward. It is a sufficient answer, I think, to the second point, to say that the Weed was not wrongfully on the western side. The custom respecting this part of the river, justified her. The sailing rules prescribed by the

act of 1885 do not apply to the locality, which is within the port of Philadelphia. I do not think it important that the Bowen did not again signal in answer to the Weed,—as is assumed in the third point. The latter was fully justified in treating the previous signal as addressed to her as well as to the Hooley, which was in her company. The Bowen could not pass between these vessels, as the witnesses testify, and as is apparent from their situation. Going eastward of the Hooley, she must also go eastward of the Weed, why then require a second signal that she intended going eastward when the sound of the first had scarcely died away? The Weed and Hooley being substantially together, one signal was sufficient for both, and satisfied the requirements of the rule. The proofs show that such signaling conforms to the custom prevailing under such circumstances. I cannot doubt the respondent's liability. Nor am I able to see that the Weed was guilty of any negligence contributing to the result. She immediately turned westward, on receiving the Bowen's notification of her purpose to go eastward, and when the latter changed westward she went further over or endeavored to do so. It is doubtful whether she could have safely reversed in view of the Hooley's position when the danger became apparent.

The libel against the Bowen is sustained. If the parties cannot agree on the amount of damages, a commissioner will be appointed. The libel against the Weed is dismissed.

THURBER *et al. v.* CECIL NAT. BANK *et al.*

(*Circuit Court, D. Maryland.* October 15, 1892.)

1. EQUITY—PLEADING—JURISDICTION—BILL OF DISCOVERY—OTHER RELIEF.
A bill filed as a bill of discovery, but containing a prayer for other specific and general relief, showed that certain goods pledged to complainants were stored in warehouses by their agent, who took storage receipts in his own name as "agent," and afterwards pledged them to defendant bank for his own benefit. *Held* that, whether or not the bill was sufficient as a bill of discovery, the facts alleged made a case cognizable in equity, since they showed that the goods were apparently impressed with a trust, and that there had been a breach of the trust participated in by the bank.

2. DEPOSITIONS—RE-EXAMINATION OF WITNESS BY CONSENT.
The taking of testimony before a master was protracted and desultory because of the sickness and death of counsel, and of difficulty in obtaining the attendance of witnesses, and, by consent of parties, many orders were obtained enlarging the time for taking testimony, and other orders for admitting testimony taken out of time as if orders for enlargement had been made. *Held*, that such orders could not be considered as an agreement to admit inadmissible testimony thus taken, and that one of the consenting parties could still invoke the rule requiring the suppression of depositions taken on the re-examination of witnesses who had been once examined and cross-examined as to the same matters, unless an order for such re-examination had been first obtained for cause shown.

3. PRINCIPAL AND AGENT—MISCONDUCT OF AGENT—RIGHTS OF THIRD PERSONS—NOTICE.
An agent, pursuant to the order of his principal, loaned money on a pledge of personal property, taking warehouse receipts therefor in his own name as "agent," which he pledged to secure his individual debts to a bank having knowledge of the business relations of the principal and agent and the operations in which they were engaged. *Held*, that this knowledge, together with the use of the word "agent" on the receipts, was sufficient to put the bank upon inquiry, and it was liable to the principal for the amount realized by it from the sale of the goods so pledged.

4. SAME—POWER TO SELL—PLEDGE.
The fact that the agent had power to sell for his principal did not affect the duty of the bank to make inquiry, for authority to sell does not include authority to pledge.

5. SAME—STORAGE CERTIFICATES—RIGHT TO PLEDGE.
The Maryland factors' act, (Code, art. 2,) providing that any person intrusted with storekeepers' certificates or other similar documents showing possession may pledge the goods to anybody who is without notice that such person is not the actual owner, does not excuse the bank from liability, for the word "agent" and the circumstances charged it with notice.

6. SAME.
Md. Code, art. 14, declaring storage receipts to be negotiable instruments in the same manner as bills of lading and promissory notes, does not excuse the bank from liability; for, when the fiduciary character of the holder is expressed on the face of a negotiable instrument, notice is thereby given to the indorsee that the holder *prima facie* has no right to pledge.

7. SAME.
The agent took certain money due his principal, made advances to third parties, and purchased goods therewith, which he warehoused in his own name as agent, thereafter pledging them to the bank by transfer of the storage receipts. He never intended his principal to have these goods. *Held*, that the title to such goods was never in the principal, and that the bank was not liable for the amounts advanced on them.

8. SAME—LACHES.
The principal heard that goods which he suspected might be his were being sold by direction of the bank, but did not notify it of his claim until four months afterwards. During this period the bank had paid over to the agent certain sums remaining after the satisfaction of its loans, and claimed that the principal was guilty of laches. It did not appear, however, whether these sums were realized from the goods owned by the principal or from those owned by the agent. *Held*, that there was no presumption that they were the principal's goods, and the delay would therefore not defeat his right of recovery.