probably went there to see if the boat she was in search of was in tow of the Ice King, and she was also in fault for not signaling at a proper distance; (9) that at no time when the boats were within a quarter of a mile of each other, and probably upwards of a quarter of a mile, was the green light of the McCaldin Brothers as much as a point on the starboard bow of the Ice King, as is apparent from consulting a chart of the channel of the river; and the omission of any timely signal by the McCaldin Brothers was also a violation of the inspectors' rules.

Considering that the McCaldin Brothers is chiefly to blame for this collision, I have hesitated much in determining whether the nonobservance of the inspectors' rules ought to be deemed a proximate cause of the collision in the present case. But I find it impossible to hold that the giving of the required signal by the Ice King would not probably have been of any use; still less, to say that it could not possibly have been of use. *The Pennsylvania*, 19 Wall. 125, 136; *The Dentz*, 29 Fed. Rep. 528.

It is clear from the testimony that the pilot of the McCaldin Brothers was navigating under a misapprehension as to the state of the tide; and that he was going over to the east shore, conceiving the tide to be ebb, where he says he would not have gone had he known the tide to be flood. A timely whistle from the Ice King, whether of one blast, or of two blasts, would have made known her intention to the McCaldin Brothers, and would naturally have tended to correct her pilot's mistake. It cannot be said that the rules as to giving signals are not designed to correct gross mistakes, or even stupid blunders. They are prescribed for the very purpose of coming to a common understanding and of preventing mistakes, whether slight or gross. *The Connecticut*, 103 U. S. 710, 713; *The Clara* and *The Reliance*, 49 Fed. Rep. 765, 767, 768; *The T. B. Van Houten*, 50 Fed. Rep. 590; *The Amos C. Barstow*, Id. 623. The course of the two boats was so nearly head and head that they cannot be exempted from the operation of the rules. Even the pilot of the Ice King estimates that the distance they would have passed and cleared each other, had not the McCaldin Brothers made her sheer to starboard, as he alleges she did, would only have been some 75 to 100 feet. For some time, therefore, they must have been very nearly head and head, and the obligation to give timely signals was equally obligatory on each. I do not find that any of the cases cited by the claimants would excuse the Ice King's omission of the signal.

I am obliged, therefore, to hold both vessels responsible, and to allow the McCaldin Brothers to recover one half her damages, not exceeding, however, the stipulated value of the Ice King and her freight in limitation of her liability, to which I find the owners entitled, or if other claims appear, her pro rata of such value.

## ROCK ISLAND NAT. BANK *v.* J. S. KEATOR LUMBER CO. *et al.*

*(Circuit Court N. D. Illinois, S. D.* October 31, 1892.)

REMOVAL OF CAUSES—TIME OF APPLICATION.

Under Act. Cong. Aug. 13, 1888, § 3, (25 St. at Large, p. 433,) which provides that a defendant may remove a cause at the time or before he is required by the state law or rule of court to plead or answer, a petition for removal filed after the statutory period for answering has expired comes too late, even though filed within the time allowed for answering by order of court, where such order is based on a stipulation entered into after expiration of the statutory period.

In Equity. On motion to remand. Motion granted.

*Sweeney & Walker*, for complainant.

*W. H. Moore*, for the J. S. Keator Lumber Company.

*Miller & Starr*, for Thompson & Root.

BLODGETT, District Judge. This cause was originally commenced in the circuit court of Rock Island county, in this state, and removed to this court on the petition of the defendants Thompson & Root. A motion is now made to remand the same upon two grounds: *First*, that the petition for removal was not filed in apt time; *second*, that no separable controversy is shown in the case which justifies the removal of the case in behalf of the defendants Thompson & Root. The record shows that the defendants Thompson & Root were brought into the court as nonresidents by publication of notice under the laws of the state of Illinois in regard to chancery practice; that, by the published notice, these defendants were required to appear in the case on the first day of the then next September term of said court, which was on the 5th day of September, 1892; that said notice was published in time to require the defendants to make answer at the time mentioned; that no appearance was entered by said defendants, or answer or plea filed, at the time required by the notice, and under the statute, but that, on the 13th day of September, a stipulation in writing was made and filed in the cause between the complainant and these defendants, by which these defendants were given 10 days' further time in which to plead in the cause; and the court, in pursuance of such stipulation, entered an order extending the time for the defendants to plead 10 days from the date of such stipulation; and that, on the 22d day of September, the said defendants filed their petition and bond for the removal of the cause to this court.

Section 3 of the act of August 13, 1888, determining the jurisdiction of the circuit courts of the United States, and regulating the removal of cases from the state courts, (25 St. at Large, p. 433,) provides that a defendant desiring to remove a cause from a state court to the federal court may do so "at the time or any time before the defendant is required by the laws of the state, or the rule of the state court in which such suit is brought, to answer or plead to the declaration or complaint of the plaintiff." Section 16, c. 22, Rev. St. Ill., governing the practice in courts