

explain away the charge under investigation, it will be your duty to order such evidence to be produced. Formerly it was held that an indictment might be found if evidence were produced sufficient to render the truth of the charge probable. But a different and a more just and merciful rule now prevails. To justify the finding of an indictment you must be convinced, so far as the evidence before you goes, that the accused is guilty; in other words, you ought not to find an indictment unless, in your judgment, the evidence before you, unexplained and uncontradicted, would warrant a conviction by a petit jury. To authorize you to find an indictment or presentment, there must be a concurrence of at least 12 of your number,—a mere majority will not suffice. You are to keep your deliberations secret, and allow no one to question you as to your own action, or the action of your associates on the grand jury. In the progress of your examinations, should questions arise concerning which you may desire further instructions from the court, you may come into court for that purpose, and the law will be further explained to you with respect to such questions.

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THE NUTMEG STATE.

THE MONITOR.

HARRIS et al. v. THE NUTMEG STATE.

TRACY et al. v. THE NUTMEG STATE et al.

(District Court, S. D. New York. June 20, 1894.)

**COLLISION—STEAM VESSELS CROSSING—DUTY TO MAINTAIN SPEED.**

A steamtug gave two whistles to a steamboat on her starboard hand, and on a crossing course, and then slowed her engines. *Held* in fault for the collision which ensued, because of such slowing; it being directly contrary to the meaning of her signal, and a thwarting of the other vessel's attempt to obey.

Libel against the steamer Nutmeg State for damages to certain barges in the tow of the steamtug Monitor. The damages were caused by a collision between the Monitor and the Nutmeg State. The Monitor was made a defendant upon the petition of the Nutmeg State.

Stewart & Macklin, for Tracy and others.  
 Carpenter & Mosher, for the Nutmeg State.  
 James Armstrong, for the Monitor.

BROWN, District Judge. On the 26th of December, 1893, at about half past 2 in the afternoon, as the steamtug Monitor, with barges belonging to libelants in tow on each side of her, was coming down about the middle of the East river, in the ebb tide, she saw, when about off pier 49, the steamer Nutmeg State coming out of her slip at pier 35, on the New York side. When the latter had cleared her slip, the Monitor gave her a signal of two whistles, to which the Nutmeg State answered with two, signifying that

she would go astern of the Monitor. The pilot of the Monitor starboarded his wheel, but soon after slowed his engine, because, as he says, he did not see the Nutmeg State rounding to port as much as he expected, and he wished to have his engine in condition to back immediately, if necessary, without liability to catch on the center. Soon afterwards the Nutmeg State struck the side of the barge which was on the starboard side of the Monitor, and the shock damaged two boats on the Monitor's port side also. The above libels were filed against the Nutmeg State to recover the damages; and the Monitor was brought in as defendant upon the petition of the latter.

I am satisfied upon the evidence that this collision was brought about by the act of the Monitor in slowing her speed, after she had given a signal of two whistles to the Nutmeg State, thereby, in effect, agreeing that she would go ahead of her. The evidence leaves no doubt that but for this slowing the Nutmeg State would have passed clear astern. The slowing of the Monitor was directly contrary to the meaning of her signal, that she would go ahead. It was essentially a thwarting maneuver, which places upon her the fault for the collision. The Monitor was tardy in giving her signal; for though her pilot saw the Nutmeg State coming out before she was out of her slip, he delayed his whistle till she was well outside of it. The *St. Johns*, 34 Fed. 763, affirmed 42 Fed. 75; The *Britannia*, 34 Fed. 546, 556, affirmed 153 U. S. 130, 14 Sup. Ct. 795.

I do not perceive that the Nutmeg State was to blame. The contrary maneuver of the Monitor in slowing was the last thing that the Nutmeg State was to expect. She had come out of her slip under a hard-a-starboard wheel, and kept it until collision. The river there being only about 1,300 feet wide, and the Monitor near the middle, there was very little space for the Nutmeg State to maneuver after she came out. She could not by reversing have stopped in time after the slowing of the Monitor was perceived; only 250 to 300 feet distant, she was already in extremis, and reversing would have brought her head to starboard and made a worse collision probable. I think under the special circumstances the master's judgment was correct; that his only chance of escape was to continue on with a hard-a-starboard wheel. That he did not escape was not his fault, but the Monitor's.

The libelants are, therefore, entitled to judgment against the Monitor; and the Nutmeg State is discharged.

Decree accordingly.

## CAMPBELL et al. v. COLLINS.

(Circuit Court, D. Rhode Island. August 3, 1894.)

No. 2,507.

**REMOVAL OF CAUSES—LOCAL PREJUDICE—REMOVAL BY PLAINTIFFS.**

The clause in the act of August 13, 1888 (section 2), relating to the remand of any suit "which is now pending in any circuit court, or may hereafter be entered therein," and which has been removed by the plaintiff on the ground of local prejudice, relates only to causes already removed under the act of 1875, and does not, by implication, authorize further removals by plaintiffs on that ground. *Fisk v. Henarie*, 32 Fed. 417, approved.

This was an action in a state court by Campbell & Macomber against John E. Collins. Petition for a removal of the cause to this court, on the ground of prejudice and local influence.

James E. Denison, for petitioner.

CARPENTER, District Judge. This is a petition brought by one of the plaintiffs in an action at law now pending in the appellate division of the supreme court of Rhode Island to remove the same into this court. The petition alleges that the plaintiff, at the beginning of the suit, were, and still are, citizens of the state of Maine, and that the defendant, at the beginning of the suit, was, and still is, a citizen of the state of Rhode Island, and further alleges that, from prejudice and local influence, the petitioner will not be able to obtain justice in the said state court, or in any other state court to which he may, under the laws of the state, have the right to remove said cause. On this petition a citation to show cause was issued and served. The defendant has made no appearance.

This petition is filed on the theory that the words in the removal act of August 13, 1888, "at any time before the trial of any suit which is now pending in any circuit court or may hereafter be entered therein, and which has been removed to said court from a state court on the affidavit of any party plaintiff that he had reason to believe," etc. (25 Stat. 435), amount to a grant by implication to the plaintiff in a cause to remove the same for prejudice or local influence in the same way in which it may be removed by the defendant under the provisions of the next preceding paragraph of the same act.

This whole statute came under the consideration of Judge Deady in the circuit court for the district of Oregon in October, 1887, at which time the act of March 3, 1887, was in force (24 Stat. 552). In the language of the clauses here referred to, the act of March 3, 1887, is identical with the act now in force. The construction of the clause here relied on was perhaps not specifically necessary to the determination of the question there pending, but to the determination of that question it was necessary to bring a comprehensive construction of the whole of the amendatory act of 1887; and the decision may therefore well be held to be an authority