

ceived no reply. When the vessels were 600 or 700 feet apart alarm whistles were blown, by the Schulz, which stopped and reversed. The pilot of the Little Silver did not hear the signals of the Schulz, nor did he notice the schooner in tow of the Schulz, nor slacken his great speed till quite near her. A tow of barges crossed to the westward, between the Little Silver and the Schulz and her tow a few moments before the collision, and the hawser to the schooner was not perceived until the barge had passed, and the Little Silver was within about 200 feet of the hawser.

Both the defendant boats are to blame for this collision. The Schulz, at the time when the necessity for precaution commenced, had the Little Silver on her own starboard hand, while the Schulz must have been on the Little Silver's port hand. There was nothing at that time to prevent the Schulz from going to starboard and passing astern of the Little Silver; or if she did not wish to go to starboard of the west bound tow, she would have passed astern of the Little Silver by slowing in time, as she might also have done. In giving the signal of two whistles to the Little Silver, she took the risk of their being heard by the latter, and of her acquiescence in a departure from the rules.

The Little Silver, though the privileged vessel, is also clearly to blame, because she was so easily manageable and might without difficulty have avoided the schooner after it was perfectly clear that the Schulz was not going astern of her, and was unable to avoid collision. The evidence shows that the Little Silver could come to a dead stop in advancing about 600 or 700 feet. When at that distance, it was self-evident that the Schulz with the schooner upon a hawser, could not avoid collision by anything the Schulz could do if the Little Silver kept on. It was the duty, therefore, of the Little Silver on perceiving that fact to reverse. Had she done so, the collision would have been avoided. That she did not do this, is plainly in consequence of a deficient lookout, in not having perceived the schooner astern of the tug, as she ought to have seen her, long before the west bound tug intervened. The lack of a proper lookout was thus the real cause of the collision on the Little Silver's part. Each being to blame, both must be held answerable for the libellant's damages, with costs.

THE GENERAL KNOX.

FLANNERY v. THE GENERAL KNOX.

L'HOMMEDIEU v. SAME.

CHAPMAN DERRICK & WRECKING CO. v. SAME.

(District Court, E. D. New York. May 4, 1896.)

SALVAGE—FIRE AT THE DOCK—FIRE DEPARTMENT—CLOSING PORTS.

Fire broke out in the hold of the ship G. K., which could only be put out by pumping her full of water. The libellant's boats arrived between 3:30 and 5:30 o'clock, a. m. and played streams until about 2 o'clock; but the chief work in filling up the ship was done by the Fire Department boats, Havemeyer and New Yorker, which arrived at about 4 o'clock a. m. At about 9 or 10 a. m. it was found the water was running out through some open ports below the water line, as fast as it was pumped

in. Three hours were consumed by the diver of one of the libellants' boats, and assistants, in closing these ports: *Held*, that though the main work of filling the ship was done by the Fire Department, prompt assistance by tugs in cases of ships on fire should receive encouragement by suitable compensation for whatever aid they in fact render; and in the above cases \$100., \$200. and \$300. respectively were allowed to the libellant's tugs.

In Admiralty—Salvage—Fire at the Dock.

Carpenter & Park, for Chapman Derrick & Wrecking Co.

Hyland & Zabriskie, for Flannery.

Stewart & Macklin, for L'Hommedieu.

George A. Black, for claimant.

BROWN, District Judge. The fire broke out in the hold or between-decks of the General Knox and was confined to the middle part of the ship. The work of putting it out was mainly done by flooding the ship by pumping her full of water. Most of this work was undoubtedly done by the Fire Department. About 12 land engine companies, all told, were more or less employed from about half past 3 in the morning till after 2 in the afternoon. The fire boats Havemeyer and New Yorker were also in attendance from about 4 o'clock in the morning till about 2 in the afternoon. Flannery's tug, the Bulkley, arrived about half past 5 and played one stream by a hose run across the dock. The Flushing arrived about half past 4 and played two streams, which were probably of some special service at first in the main hatch where flames were seen. The Hustler lay in the same slip with the ship, and got two streams going soon after the fire broke out. At about 9 or 10 o'clock it was found that no progress was making in filling the ship, for the reason that some ports were open on the port side beneath the water line, so that the water run out as fast as it was pumped in. The Hustler's diver and men were procured to close those ports, which took about 3 hours. During a portion of this time the pumping was necessarily suspended. After these ports were closed the progress of filling the ship was rapid, and all the boats were discharged at 2 o'clock p. m.

It is urged that the list of the ship to port was so great that her hatches would let the water out as much as the open ports; so that the closing of the port holes was of no service.

But I do not think the evidence, and the subsequent filling of the ship, are compatible with this theory; and I therefore find that the closing of the ports by the Hustler's diver and men was a special and valuable service.

Aside from this service, and the Flushing's first pumping, the work of these tugs in helping to fill the ship was of small importance, compared with the amount of water pumped in by the land engines and fire boats. For so much as they did, however, they deserve compensation; and while tugs cannot be justified in any obstruction of superior work by the Fire Department, nor receive compensation while doing so, the necessity remains of encouraging tugs to go promptly to the aid of ships on fire, by the allowance of some award where they take part in the work.

To the Bulkley, which played but one stream, I allow \$100.; to the Flushing, \$200.; to the Hustler, \$300., with costs.

EUSTIS et al. v. CITY OF HENRIETTA.

(Circuit Court of Appeals, Fifth Circuit. April 28, 1896.)

No. 447.

REMOVAL OF CAUSES — AMOUNT IN CONTROVERSY — OBJECTION BY REMOVING PARTY.

When a party has procured the removal of a cause from a state court to the United States circuit court, upon an averment that the amount in controversy is over \$2,000, he ought not to be heard, upon appeal or error, to suggest that the circuit court had no jurisdiction, because the amount in controversy was less than the minimum jurisdiction of that court, solely because the judgment finally rendered is less than the jurisdictional amount.

Appeal from and in Error to the Circuit Court of the United States for the Northern District of Texas.

J. M. McCormick and Wendell Spence, for plaintiffs in error.

W. S. S. Simpkins, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and SPEER, District Judge.

PARDEE, Circuit Judge. The city of Henrietta instituted a suit at law in the district court for the county of Clay, state of Texas, against William G. Eustis and others, to recover certain real estate situated in the city of Henrietta, state of Texas, and, in default of such recovery, to recover certain sums alleged to be due the city of Henrietta for taxes on the property claimed. The defendants removed the case to the United States circuit court for the Northern district of Texas, and, in their petition for removal, averred that the sum or value in controversy, exclusive of interest and costs, exceeded the sum of \$2,000. The case, after removal, was proceeded with in the circuit court, and, after various pleadings, resulted in a trial before the court and a jury. On this trial, the parties entered a written consent, in accordance with which a judgment was entered. This consent, among other matters, recited as follows:

"It is further agreed that this case, together with all the pleadings, depositions, and record evidence, of every character and description, be transferred to the equity docket; and that the lien of plaintiff for the taxes aforesaid, as set forth in the petition of plaintiff, be foreclosed at once against the properties, respectively, for the amounts due; and that a decree be so entered, subject, however, to the payment of said taxes, as above agreed to, in which event a release of said judgment and decree be entered."

In pursuance of this stipulation, the cause was entered upon the equity docket, and a decree entered in accordance with the terms mentioned. The defendants prosecute a writ of error to the judgment at law, and an appeal from the decree on the equity side of the court.

The defendants below (plaintiffs in error and appellants here), having procured the removal of the cause to the circuit court, upon an averment that the amount in controversy was over \$2,000, ought not to be heard in this court to suggest, as they do in their first as-