

keep clear. Moreover, had the location of the scow or the position of the bucket in either case so narrowed the passage that it was impossible for the steamer to go by without striking, or even only extremely hazardous to attempt going, the steamer would still be in fault, as she was navigated in broad daylight, with full knowledge of existing conditions. The result is that, as to them, the rule applies that, where one vessel is clearly proven in fault, the other is not to be held guilty on mere presumptions or suggestions arising from the fact that a collision occurred. The Oregon, 158 U. S. 186, 197, 15 Sup. Ct. 804, 809, and the cases there cited.

It is also claimed that the barge was in fault for not raising her spuds when she saw the probability of a collision, and thus either preventing it or easing it; but this was not a maneuver of such a customary nature, or so clear as to its probable effect, that we can say that the barge was in fault in that respect under the rule in *extremis*.

The decree of the district court is affirmed, with interest, and the costs of this court are adjudged to the appellee.

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THE IMPERATOR.

THE McCAULEY.

(District Court, E. D. Pennsylvania. November 16, 1896.)

Nos. 94 and 95 of 1893.

COLLISION—STEAMERS IN RIVER—LOOKOUTS.

Where two steamers, going down the Delaware river on parallel courses, some distance apart, were met by an ascending steamer, whose answering signal to one of them was mistaken by the other as a signal to herself, and a collision between the latter and the ascending vessel resulted, *held*, that both were in fault, for not having proper lookouts, for not observing proper care as to the situation generally, and for not stopping and reversing promptly when a misunderstanding became apparent.

These were cross libels in rem to recover damages resulting from a collision.

John F. Lewis and Horace L. Cheyney, for the McCauley.  
Henry R. Edmunds, for the Emperor.

BUTLER, District Judge. The material facts are that on the night of August 17th, 1893, at about 9:15 o'clock, the "Imperator" and another vessel, the "Chauncey Vibbard," were passing down the Delaware river near Eagle Point, above League Island, on parallel courses, probably 200 to 300 yards apart, the "Imperator" being possibly 300 yards in advance; that the "McCauley" was about half a mile below, passing upward; that neither the "McCauley" nor "Imperator" had a proper lookout, and that neither was aware of the other's presence as early as she should have been; that the course of the "McCauley" at this time led immediately between those of the "Imperator" and the "Vibbard," but nearer that of the latter. In this situation the "Vibbard" signified

her purpose, by two blasts of the whistle, to pass eastward of the "McCauley," and the latter answered by two blasts, and sheered westward. Up to this point of time the "McCauley" had not seen the "Imperator," though she was near by, and in plain view. The latter vessel, not having heard the "Vibbard's" signals and being unaware of her presence, supposed the "McCauley's" signals were intended for her, the "Imperator," and immediately answered them by two blasts, and turned eastward. The "McCauley," thus becoming aware of the "Imperator's" presence in her front, and desiring, and intending to pass between this vessel and the "Vibbard," blew one blast to warn the "Imperator" to go westward. This signal, or its object, seems not to have been understood, and the "Imperator" kept her course eastward. The "McCauley" on blowing this latter blast straightened up, intending to run between the two vessels in her front, depending upon the "Imperator" changing her course to the westward; and very soon she and the "McCauley" came into collision; the "Vibbard" escaping narrowly, by an early reversal of her engine.

I find both the "Imperator" and the "McCauley" to have been in fault; the former for failing to maintain a proper lookout, and to observe proper care respecting her situation, generally. She should have seen the "Vibbard" or at least have heard her signals. Had she heard them she would have known that the "McCauley's" signals were in answer; and while she could not then have known that they were not intended for her, (the Imperator) also, (for it would not have been an improper signal to her in the situation) she should not have concluded that the signals were intended for her without an effort to ascertain the fact, before changing her course; and upon receiving the "McCauley's" second signal which she appears not to have understood, (and probably could not safely have obeyed, if she had understood it) she should have instantly stopped and ascertained the situation (of which she was still ignorant) and the intention of the McCauley.

The McCauley I find to have been in fault for failure to keep a proper lookout, and to understand the situation in her front, before signaling in answer to the "Vibbard"; and in not promptly stopping, or keeping to the westward, as she might readily have done, in accordance with her first signal, after discovering the "Vibbard's" presence and seeing that she had turned eastward in pursuance of this signal. The second signal (the single blast) and the attempt to run between the two vessels in her front, at the time, was a plain mistake. The situation of the vessels when this signal was given rendered the attempt to pass in this manner hazardous, if not impracticable; and the second signal was confusing, under the circumstances; and tended to bring all three of the vessels into collision.

Sufficient has been said to indicate my reasons for believing that the damages sustained should be jointly borne by the two vessels; and a decree may be prepared accordingly.

## BOSTON SAFETY &amp; DEPOSIT CO. v. CITY OF PLATTSMOUTH et al.

(Circuit Court, D. Nebraska. November 28, 1896.)

No. 343.

## FEDERAL COURTS—JURISDICTION—DIVERSE CITIZENSHIP—ASSIGNED CAUSE OF ACTION.

A mortgagee, holding by assignment a contract made between two corporations of the same state, cannot sue in a federal court for the specific performance of such contract, though itself a corporation of another state.

This was a suit in equity brought by the Boston Safety & Deposit Company against the city of Plattsmouth and others. The cause was submitted on a motion filed by the city of Plattsmouth to dismiss for want of jurisdiction.

Samuel M. Chapman, for complainant.

Charles Grimes and Matthew Gering, for defendant city of Plattsmouth.

A. N. Sullivan, for defendant Plattsmouth Waterworks Co.

SHIRAS, District Judge. From the record in this case it appears that on the 11th of March, 1886, the city of Plattsmouth, a municipal corporation created under the laws of the state of Nebraska, entered into a contract with one George B. Inman, his successors and assigns, for the erection of a system of waterworks to supply water for the use of the city of Plattsmouth and its inhabitants; the city agreeing on its part to pay for a certain number of hydrants, and to levy and collect a tax to provide the means for meeting such payment on its part. To carry out the contract for the erection of the waterworks, a corporation was created under the laws of the state of Nebraska known by the name of the Plattsmouth Waterworks Company, and, to secure the money needed to construct the works, bonds in the sum of \$125,000 were issued by the waterworks company, secured by a mortgage deed covering the property of the company, including all contracts for payment of water rentals. By the terms of the mortgage the Boston Safety & Deposit Company, the complainant herein, was made trustee in such mortgage, with the right to act for the protection and enforcement of the rights of the bondholders, said company being a corporation created under the laws of the state of Massachusetts.

In the bill filed in this case, it is averred, in substance, that the city of Plattsmouth has for some time past failed to make due payment of the water rentals to the water company as it had agreed to do, and that, by reason of such failure to make payment on part of the city, the water company had been rendered unable to meet its payments of interest on the bonds secured by the mortgage, it being also averred that the water company had failed to enforce such payments; and therefore the Boston Safety & Deposit Company, as the trustee for the bondholders, prays the aid of the court to enforce payment on part of the city. In effect, the purpose of the bill is to obtain the specific performance on part of the city of the obligations by it assumed in the contract between the city of Plattsmouth and George B. Inman and his assigns. The right of the complainant, as the trustee for the