show that such default certainly did not and could not possibly contribute to the disaster.

Conceding the correctness of the conclusion of the court below that the master of the tug failed to stay by and render assistance, his conduct is to be gravely reprehended, and in a proper proceeding doubtless he may be made to suffer the penal consequences that follow the violation of the statute; but to hold that such violation makes the tug responsible, in all events, for the collision itself, is to extend its meaning beyond its plain words. While such misconduct creates the strongest presumption against it, and requires that the tug should show affirmatively that the collision was not due to its fault or neglect, when such "proof to the contrary" has been offered, we find no authority in reason or precedent for holding it responsible. The English cases under the statute are The Adriatic, 3 Asp. 16; The Vallego, Ad. Div. April 27, 1887; The Germania, 21 Law T. (N. S.) 44. The American cases are The Robert Graham Dunn, 63 Fed. 167, affirmed 17 C. C. A. 90, 70 Fed. 270; The Kenilworth, 64 Fed. 890; Towboat Co. v. Winslow, 22 C. C. A. 327, 76 Fed. 595. In all of these cases there was evidence either of some fault in addition to the failure to stay by or an absence of proof that the vessels held responsible were not in default. They are, therefore, clearly distinguishable from the case now under consideration, where the evidence showed fault on the part of the schooner sufficient to cause the collision, in her failure to provide herself with the mechanical fog horn, which the regulations require. In The Pennsylvania, 19 Wall. 137, where a bark was provided with a bell instead of a fog horn, the court says:

"How can it be proved that, if a fog horn had been blown, those on board of the steamer would not have heard it in season to have enabled them to check their speed or change their course, and thus avoid any collision? Though there were two lookouts on the steamer, each in his proper place, the bark's bell was not heard until the vessels were close upon each other. Who can say the proximity of the vessels would not have been discovered sooner if the bark had obeyed the navy regulations? * * * The truth is, the case is one in which, while the presumption is that the failure to blow a fog horn was a contributory cause of the collision, and while the burden of showing that it was in no degree occasioned by that failure rests upon the bark, it is impossible to rebut the presumption."

In The Martello, 153 U. S. 65, 14 Sup. Ct. 723, the bark was provided with a tin fog horn, not sounded by mechanical means. The proof in that case, as in this, was that one blast of the horn was heard aboard the steamer, which was proceeding at the rate of six miles an hour. The court held that, while such speed may not be excessive, even in a dense fog, upon the open ocean, a different rule applies to a steamer just emerging from the harbor of the largest port on the Atlantic coast, and found that a speed of three miles an hour was proper under those circumstances. It says: "If the barkentine had been provided with a more powerful horn, it appears to be not only possible, but probable, that more than one blast would have been heard, and the steamer thus apprised of the course and distance of the bark," and quotes with approval the opinion of Sir Robert Phillimore in The Love Bird, 6 Prob. Div. 80, to the effect

that under such circumstances the burden was on the bark to show "that by no possibility could the sounding of a mechanical fog horn * * * have prevented the collision, or that it would not possibly have given more warning to the other vessel." The court below having found that the schooner was in fault in not having a mechanical fog horn, and that this was one of the causes of the collision, we are of the opinion that it was a cause sufficient to account for it; and the testimony not showing any wrongful act, neglect, or default on the part of the tug which tended to produce it, our conclusion is that there is such "proof to the contrary" as relieves the tug from responsibility under the statute. The decree of the district court is reversed.

MEMORANDUM DECISIONS.

THE ASPASIA.

STEINWENDER v. THE ASPASIA.

(Circuit Court of Appeals, Second Circuit. March 19, 1897.)

SHIPPING—DAMAGE TO CARGO—PERILS OF SEA.

Appeal from the District Court of the United States for the Southern District of New York.

This was a libel by Steinwender and others against the ship Aspasia to recover for damage to cargo. The district court found that some of the goods were damaged by the fault of the ship, and others by extraordinary sea perils, for which she was not responsible, and decreed accordingly. 79 Fed. 91. From this decree the libelants have appealed.

Lawrence Kneeland, for appellants.
Charles C. Burlingham, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Decree of district court affirmed, with interest and costs, on decision of district judge.

BARBER et al. v. PITTSBURGH, F. W. & C. RY. CO. et al. (Circuit Court of Appeals, Third Circuit.) Questions of law certified to the supreme court of the United States. See 17 Sup. Ct. 488.

BURDON CENT. SUGAR-REFINING CO. et al. v. PAYNE et al. (Circuit Court of Appeals, Fifth Circuit.) Questions of law certified to the supreme court of the United States. See 17 Sup. Ct. 754.

CALIFORNIA REDWOOD CO. v. BELCHER et al. (Circuit Court, N. D. California. April 12, 1897.) Bill in equity to have the respondents decreed to hold, in trust for the complainant, the legal title to a certain quarter section of land. Bill dismissed. Page, McCutchen & Eells, for complainant. Henley & Costello, for respondents.

MORROW, District Judge. This case presents substantially the same questions which were raised in the case of California Redwood Co. v. Litle (No. 11,812; just decided) 79 Fed. 854; and upon the authority of that case, and of the case of Mortgage Co. v. Hopper, 12 C. C. A. 293, 64 Fed. 553, the bill will be dismissed, with costs.

CALIFORNIA REDWOOD CO. v. MAHAN. (Circuit Court, N. D. California.) Bill in equity to have the respondent decreed to hold, in trust for the complainant, the legal title to a certain quarter section of land. Bill dismissed. Page, McCutchen & Eells, for complainant. Henley & Costello, for respondent.

MORROW, District Judge. This case presents substantially the same questions as were raised in the case of California Redwood Co. v. Litle (No. 11,812; just decided) 79 Fed. 854; and upon the authority of that case, and of the case of Mortgage Co. v. Hopper, 12 C. C. A. 293, 64 Fed. 553, the bill will be dismissed, with costs.

CALIFORNIA REDWOOD CO. v. SMITH et al. (Circuit Court, N. D. California.) Bill in equity to have the respondents decreed to hold, in trust for the complainant, the legal title to a certain quarter section of land. Bill dismissed. Page, McCutchen & Eells, for complainant. Henley & Costello, for respondents.

MORROW, District Judge. This case presents substantially the same questions as were raised in the case of California Redwood Co. v. Litle (No. 11,812; just decided) 79 Fed. 854; and upon the authority of that case, and of the case of Mortgage Co. v. Hopper, 12 C. C. A. 293, 64 Fed. 553, the bill will be dismissed, with costs.

FOURTH ST. NAT. BANK v. YARDLEY.

(Circuit Court of Appeals, Third Circuit. April 23, 1897.)

No. 8.

BANKS AND BANKING—EQUITABLE ASSIGNMENT—CHECKS AND DRAFTS—SPECIAL AGREEMENT.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

This was a suit in equity by the Fourth Street National Bank against Robert M. Yardley, receiver of the Keystone National Bank, to subject moneys in his hands to the satisfaction of an alleged equitable charge or lien thereon. The circuit court dismissed the bill, and complainant took an appeal to the circuit court of appeals. The latter court certified certain questions to the supreme court for decision, and, having received its answers thereto (see 17 Sup. Ct. 439), has now filed the following opinion.

R. C. Dale, for appellant.
Silas W. Pettit, for appellee.

Before ACHESON, Circuit Judge, and BUTLER and GREEN, District Judges.

PER CURIAM. In this case this court certified to the supreme court of the United States two questions of law arising upon the facts of the case, which facts, as stated in our certificate, are as follows: "On the 19th day of March,