

which rests upon argument, and not upon evidence, the result was not such as was to be reasonably anticipated, and is to be ascribed to the imprudence and carelessness of the canal boat, rather than to any negligence of the steamer.

One circumstance in connection with the final release of the canal boat, seems to me to favor the defendant's theory that the canal boat sank upon the blade while loading; namely, that the blade was finally extricated by a little backward turn of the propeller, after other efforts were unavailing to separate the boat. Some time before this the strain on the hawsers had been stopped, and any list of the steamer to starboard must have been thereupon immediately righted. Had the contact with the propeller blade arisen solely from the lifting of the blade by the steamer's list to starboard, the blade would naturally have been at once drawn out from the canal boat's bottom the moment the steamer righted on an even keel, and this would have occurred as soon as the strain on the hawsers was stopped. The fact that the boat was not then released, points to the probability that the accident did not happen from any list by the steamer, and that the list, if any, was small.

I must find, therefore, that no cause of action has been made out against the steamer, and that the libel should be dismissed with costs.

THE M. VANDERCOOK.

(District Court, S. D. New York. March 25, 1898.)

COLLISION—AGREEMENT BY SIGNALS—CONTRARY NAVIGATION.

In crossing the North river upon converging courses, the tug V., with a tow, and the ferry boat Plainfield agreed by signals of two whistles that the V. should cross ahead of the P.; the V. maneuvered accordingly, but the P. came on without materially slackening speed, and collision followed. *Held*, that the P. was alone to blame for not navigating in accordance with the signals, and not giving the V. reasonable space to pass ahead.

These were two libels in rem brought respectively by Mary J. McCaffrey, as administratrix, etc., and by the Central Railroad of New Jersey, against the steam tug M. Vandercook, to recover damages caused by a collision.

Cameron & Hill, for administratrix.

Carpenter & Park, for The Vandercook.

James J. Macklin, for The Plainfield.

BROWN, District Judge. About 6 p. m. on the 14th of July, 1896, the libellant's canal boat Daniel McCaffrey in tow of the tug M. Vandercook and on her starboard side, while crossing the North river in the ebb tide from Morris street, Jersey City, bound up the East river, came in collision with the ferry boat Plainfield, bound from the Communipaw Ferry to Liberty street, New York. The starboard bow of the canal boat projected ahead of the tug, struck the ferry boat on her port side a little forward of her paddle wheels, and was

so injured that she sank a few moments afterwards. There is much conflict in the testimony. The weight of evidence, I think, establishes the following points:

1. The collision was somewhere from one-third to one-half the way across from the Jersey shore, and not far from abreast of pier 7, New York.

2. Shortly after the Plainfield left her slip, the Vandercook, being then further out in the river and heading for the Battery, and having the Plainfield on her starboard hand, gave the Plainfield a signal of two whistles in answer to the Plainfield's signal of one whistle, and received a response of two whistles from the Plainfield. The Plainfield was then heading somewhat up river, and towards the New York shore, and the vessels were probably then from 700 to 1,000 feet apart. This agreement by signals bound the Plainfield to give the Vandercook reasonable opportunity to go ahead of the Plainfield, and to govern her own navigation accordingly.

3. The Vandercook thereupon starboarded her wheel and continued her course so that at collision she headed about for pier 1; but shortly before collision she was compelled to stop and reverse because the Plainfield, contrary to the agreement, proceeded to run ahead of her.

4. That the Vandercook did not give a signal of one whistle, nor make any such sheer to the westward nor any such change of course, as is alleged by the witnesses for the Plainfield, as a justification for her subsequent course.

5. That the Plainfield, even if she was going, as she claims, under one bell at the time when her signal of two whistles was given in answer to the Vandercook's two whistles, afterwards went full speed ahead, and thereby brought on the collision; that this was a violation of the agreement made by signals between the two vessels that the Vandercook should pass ahead; that no circumstances in the situation justified this change in the ferry boat's maneuvers, and she is consequently chargeable with the blame for the collision; that the pilot's narrative is not sufficiently consistent or credible to be accepted; and that the testimony that the Plainfield made this trip within two minutes of her usual time, confirms the Vandercook's account that the Plainfield came on at nearly full speed without regard to her previous signals.

6. That the navigation of the Vandercook was in accordance with the agreement between the vessels; and that the proposition which she made and which the Plainfield accepted that the Vandercook should pass ahead was not, under the circumstances, an unreasonable proposition, as the Plainfield was easily able to go astern of the Vandercook without material disadvantage.

I find the Plainfield alone to blame.

Decree accordingly.

COMMONWEALTH OF VIRGINIA v. BINGHAM et al.

(Circuit Court, W. D. Virginia. July 27, 1898.)

REMOVAL OF CAUSES—PROSECUTIONS BEFORE JUSTICE OF PEACE—ACTS DONE UNDER FEDERAL REVENUE LAWS.

A prosecution brought before a justice of the peace for a nonindictable misdemeanor is removable to a federal court, under Rev. St. § 643, when the act charged was done by defendant under authority of a federal revenue officer, acting under color of his office. *Virginia v. Paul*, 13 Sup. Ct. 536, 148 U. S. 107, distinguished.

The Attorney General of Virginia, for plaintiff.

T. M. Alderson, U. S. Atty., for defendants.

PAUL, District Judge. This case was removed from a court held by a justice of the peace of Franklin county, Va., into this court, on the petition of the defendants. The petition was filed under the provisions of section 643 of the Revised Statutes of the United States, which provides as follows:

"Sec. 643. When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or any such law, or on account of any right, title, or authority claimed by such officer or other person under such law, * * * the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner. Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counsellor at law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully enquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or, if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered upon the docket of the circuit court and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. When the suit is commenced in the state court by summons, subpoena, petition, or any other process except capias, the clerk of the circuit court shall issue a writ of certiorari to the state court requiring it to send to the circuit court the record and proceedings in the cause. When it is commenced by capias, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus eum causa, a duplicate of which shall be delivered to the clerk of the state court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the state court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the state court shall be void. * * *"

The petition for removal alleges, in substance, that one Thomas Felts was an officer of the United States, to wit, a deputy collector of internal revenue in the Sixth district of Virginia; that petitioners