ship, and that both acted at the last moment, when, by acting a little earlier, no collision would have occurred. The order given by Capt. Howes of the tug—the first order given by him—shows that a collision was then imminent: "I said, 'If we can't cross her bows, we will have to cross her stern.'" This is suggestive of the probable fact that up to that time the tug had expected to cross the schooner's bow,—a thing she had no right to attempt, under the sailing rules prescribed by congress,—and that it was only when the vessels were in such close proximity that it appeared doubtful whether the tug could cross the schooner's bows that the order to put up the wheel was given. Those on board the Peru were of the opinion that if the tug had kept her course, or, having gone to starboard, she had continued to pull the head of the ship around, in either case a collision would have been avoided. This may be true, but speculation after the event is useless, in the face of the facts patent at the time,—that, if the tug and ship and schooner kept to their respective courses, there would likely be a collision, and that the tug and ship, in the confidence of an assumption, upon which they had no right to rely, that the schooner would not keep her course, but would tack and follow them over the bar, waited until there was no assurance of avoiding a collision in any measures that could be taken. The conduct of both vessels has the appearance of a most reprehensible indifference to a danger that was apparent, and that either could have avoided. The libelants are entitled to the relief prayed for.

THE FRANK GILMORE.

JENKINS et al. v. BUNTON et al.

(Circuit Court of Appeals, Third Circuit. January 9, 1899.)

COLLISION—LIABILITY OF TUG—NEGLIGENCE IN MAKING UP FLEET.

It being customary to make up tows at Pipetown, which is a half mile above the Smithfield Street Bridge on the Monongahela river, and to proceed down the river with their stern foremost until below the bridge, and then turn, a steamer cannot be charged with negligence in so proceeding, without first ascertaining the condition of the river below the bridge; and where, by reason of its obstruction there by boats, it was impossible to turn the fleet, and the steamer then continued on down the river without turning, she cannot be held liable for a collision with a barge, occurring without any fault in her management, though it might have been avoided had she been moving head on.

Butler, District Judge, dissenting.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Edwin W. Smith, for appellants.

Carroll P. Davis, for appellees.

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

DALLAS, Circuit Judge. On the morning of May 20, 1893, the Frank Gilmore made up a tow of several barges and flatboats at Pipe-

town, which is about half a mile above the Smithfield Street Bridge, on the Monongahela river. She took this tow down the river, stern foremost. This the court below held to be, under the circumstances, negligent navigation; and upon this finding of initial fault, as we understand the opinion, the learned judge founded his decision.

It must be conceded that, if the condition of affairs immediately below the Smithfield Street Bridge had been known to those in charge of the Gilmore before she left Pipetown, she should not have proceeded as she did. But it was not then known to them that the river was at that point so obstructed by boats that it would not be possible to turn there, as had been contemplated, and we are unable to agree that it was incumbent upon them to ascertain this fact before starting. The movement of such tows forms a very considerable and important part of the traffic of the Monongahela and Ohio rivers, and, so far as the evidence shows, it has never been supposed by those who are engaged in it that before leaving their moorings, at a half mile above the Smithfield Street Bridge, they should inform themselves of the number and situation of the craft which may be lying or in motion immediately below it; and we do not think we would be justified in now laying down a rule requiring them to do so. It is not unusual to start stern foremost, and the point at which it was intended to turn was the customary one. It was, however, found to be impossible in this instance to carry out this intention; and the Gilmore, with her tow, proceeded as originally made up, until the swift current of the Allegheny was encountered. There she was unable to turn. She struck two barges which were lying at the upper end of the Maramet abutment. Her engine was disabled. She became unmanageable, and drifted with her fleet against the libelant's barge, and sunk it. If she had been head on, the accident might not have happened; but, being stern foremost, it does not appear that she could have done anything which she did not do, to avert it. In short, we are of opinion that, unless she should be charged with constructive notice that it would not be possible for her to execute the usual maneuver immediately below the bridge,—and we have already said she should not be,—there is no fault disclosed by the evidence which contributed to the collision, and which can be justly ascribed to the Gilmore. Therefore the decree of the district court must be reversed, and the cause will be remanded to that court, with direction to enter a decree dismissing the libel, with costs.

BUTLER, District Judge. I dissent on the ground that the district judge's findings of fact are justified by the proofs; and with such findings the decree of the district court is right and should be affirmed.

RICE et al. v. DURHAM WATER CO.

(Circuit Court, E. D. North Carolina. January 17, 1899.)

1. PARTIES—EFFECT OF INTERVENTION.
An intervener in an equity suit by leave of court becomes and remains a party for all purposes of the suit, the same as though originally made one.
2. JURISDICTION OF FEDERAL COURTS — ADMINISTRATION OF PROPERTY OF INSOLVENT CORPORATION—REMOVAL OF INCIDENTAL SUITS.
Where a federal court has taken possession of the property of an insolvent corporation for distribution among creditors, it may, in its discretion, remove to itself suits pending against the corporation in the state courts, and affecting the property, by virtue of its jurisdiction to administer the same and as incidental thereto, without regard to whether or not it would have had jurisdiction of the suit.

Heard on motion by a receiver for the removal of a suit brought by an intervener against the defendant, and pending in a state court.

Winston & Fuller, for complainants.
Manning & Foushee, for the Durham Ice Co.

PURNELL, District Judge. On a bill in equity filed by nonresident bondholders, a receiver of the defendant, a state corporation, was appointed, and, under an order of the court, proceeded to collect the assets thereof. The Durham Ice Company, another state corporation, filed a petition asking to be made a party to the suit, setting forth that it had a suit for damages against the defendant corporation pending in the state court, asking for a modification of the order to the receiver herein, and that such receiver be temporarily restrained from cutting off the water supply, etc. Without objection, the ice company was, by order of court, made a party, a temporary restraining order granted, and, after hearing counsel, such restraining order was revoked, motion refused, and the receiver instructed to proceed under the former order. Upon notice duly served, the receiver now moves the court for an order removing the suit of the Durham Ice Company against the Durham Water Company from the superior court of Durham county to the circuit court, and a further order to the plaintiff therein not to further prosecute said action, respondent having voluntarily made itself a party to the suit in the United States circuit court. The motion is resisted, and the ice company insists, through its counsel, (1) that it be permitted to prosecute its claim for damages to judgment in the superior court, admitting it must stop there and come into this court to collect any judgment it may recover; (2) that its intervening petition should be treated as a special appearance; (3) that it appears the action between the ice company involves less than $2,000, exclusive of interest and costs, and this court has no jurisdiction; (4) that it appears both are domestic corporations, created by and under the laws of North Carolina, and hence there is not that diversity of citizenship necessary to give this court jurisdiction; (5) that it is not alleged that the receiver has been made a party to the suit, or the water company could not obtain a fair trial, in the state court.

There can be no question of the jurisdiction in the suit in equity (Rice against the Durham Water Company). The motion belongs to