

removal shall be filed "in such state court before or at the term at which said cause could be first tried, and before trial thereof." In this case the facts are that the act of congress took effect March 3, 1875, at which time this cause was pending in the state court, which was then in session. The term of the state court began in February, 1875, several weeks before the passage of the act, and continued some months after its passage. On the tenth of March, 1875,—seven days after the passage of the act,—the case was tried, and there was verdict and judgment for the plaintiff. The cause was taken by writ of error to the court of appeals, and thence to the supreme court of Missouri, and, having been reversed, was in January last remanded to the circuit court of the city of St. Louis for re-trial. Thereupon, on January 31st last, it was, upon petition of defendant, removed to this court. Was the February term, 1875, of the said state court, "the term at which said cause could be first tried," within the meaning of the act of congress? The position of the counsel for the defendant is that the term of court intended by the statute is a term *beginning* after the passage of the act, and to sustain this view he has cited numerous authorities, which are cited in the note of this opinion. I have examined these cases and do not find that they have the effect claimed for them by counsel.

Some of them hold that where a case was tried before the passage of the act, and a new trial was granted subsequent to its passage, a petition for removal was in time if filed at any time before the first term at which such second trial could be had; and others hold that where the case was pending when the act took effect, and for one or more terms before, and the petition for removal was filed at or before the first term thereafter at which the case could be tried, it was in time. In substance, the rule established by the adjudications is that the act applies to cases pending at the time of its passage, and there shall be an opportunity to apply it to all such cases. But no case has been cited which holds the right of removal was not lost by voluntarily going to trial in the state court after the passage of the act, and I am certainly not

disposed to go to this length unless constrained by a ruling of the supreme court. The statute not only requires the petition for removal to be filed "at the term at which said cause could be first tried," but also that it be filed "before the trial thereof." If it be regarded as settled that this language refers to a trial after the passage of the act, (and no case has gone further than this,) it does not follow that it refers to a trial at a term of court *commencing* after the act was passed. By its terms, and by its evident spirit and intent, it applies to a trial after the passage of the act, but during a term of court commencing before.

The motion to remand is sustained.

NOTE.—*Meyer v. Delaware R. Construction Co.* U. S. Sup. Court, October term, 1879; *Am. Bible Society v. Grove et al.* U. S. Sup. Court, October term, 1879; *McCullough v. Sterling Co.* 4 Dillon, 562; *Hoadley v. San Francisco*, 3 Law, 553; *Crane v. Reeder*, 15 Albany L. J. 103; *Andrews' Ex'rs v. Garrett*, 2 Cent. L. J. 797; *Rain v. R. Co.* 3 Cent. L. J. 12.

P. P. MARRION BLACKSMITH & WRECKING CO. v. THE STEAMBOAT "H. C. YAEGER."*

(Circuit Court, E. D. Missouri. March 20, 1880.)

ADMIRALTY—JURISDICTION—HOME PORT—SERVICES TO STRANDED BOAT.

—Services rendered a steamboat stranded upon a bar in the Mississippi river, some 65 or 70 miles below St. Louis, in a voyage from that port to New Orleans, are not to be regarded as having been rendered in her home port, although such boat may have been at the time within the territory of the state of Missouri.

SERVICES RENDERED AT REQUEST OF MASTER—PRESUMPTIONS.—Where such services were rendered at the request of the master, it will be presumed that they were necessary, and properly rendered on the credit of the vessel.

CLAIM FOR SERVICES—ASSIGNMENT.—The owners of one-half of the claim for such services, who have obtained the other half by assignment, are entitled to sue for the whole.

LIEN—SALVAGE.—Although the services rendered were not in the nature of salvage, the right of the libellants to a lien was not thereby affected.

*See *Monongahela Nav. Co. v. Steam Tug "Bob Connell," ante*, 218.

In admiralty. Appeal from the district court

B. H. Kern, for libellants.

W. F. Smith, for appellant.

McCCRARY, J. The steamboat "H. C. Yaeger" left the port of St. Louis about the twenty-fourth of November, 1878, bound upon a voyage down the Mississippi river to New Orleans. On the way she grounded at a place called Kas-kaskia Bend, about 65 or 70 miles below St. Louis. After making unsuccessful efforts to free his vessel from the bar on which she was fast, the master engaged the services of the tug-boat "Wild Boy," then in the neighborhood, and owned by the libellants, though chartered to Burgess & Co., on terms to be hereafter stated. The tug, with a small crew, went to the relief of the "Yaeger," taking a barge along-side, into which a portion of the cargo was placed, and after some hours' labor the vessel was pried from the bar on which she was grounded and enabled to proceed upon her voyage. The officers of the two vessels could not agree as to the price to be paid for these services, and hence this suit. There was judgment below for \$350 and the claimants appeal. Upon due consideration I have reached the following conclusions:

1. That under the circumstances the steamboat "Yaeger" is not to be regarded as having been in her home port at the time the services were rendered. She was not in port, but launched and afloat, proceeding on her voyage, and, therefore, clearly within the admiralty jurisdiction, whether within or without the territorial limits of the state of Missouri.

2. The fact that the services were rendered at the request of the master, and for the purpose of relieving the vessel from her stranded condition, raises a strong presumption that they were properly rendered on the credit of the vessel, and were necessary; and the claimants, in order to overcome this presumption, must show affirmatively that the credit was given exclusively to the owners. This they have not done.

3. At the time the service was rendered the tow-boat "Wild Boy" was in the possession of Burgess & Co., who had chartered it. These charterers were to pay the owners \$20 per day, and one-half of what was earned by the boat in such