

Fitch the damages caused by a collision between the schooner David Curry and the ferry-boat Nevada, in the East river, on the seventeenth of December, 1877. The second is brought by the owners of the schooner David Curry, to recover of the same tug and barge the damages caused to that schooner by the same collision, as well as the damages caused to the schooner by a prior collision between the schooner and the ice-barge, that occurred immediately prior to the collision between the schooner and the ferry-boat, and is claimed to have been the sole cause of such subsequent collision.

The following are my conclusions upon the evidence:

The ferry-boat Nevada was proceeding down the East river above the Catharine ferry-slip, on the Brooklyn shore, the tide being ebb. She was where she had the right to be, and was giving plenty of room for the vessels passing up the river to go by her in safety. While so proceeding she was run in to on the starboard side by the schooner David Curry, and sustained serious injuries. The cause of this collision between the ferry-boat and the schooner was a sudden change of course on the part of the schooner which carried her into the ferry-boat.

The schooner was proceeding up the East river, and in about the middle thereof. While so proceeding she was run into on her port bow by the ice-barge Fitch which was also proceeding up the river, between the schooner and the New York shore, in tow of the tug Adriatic. The immediate and necessary result of this collision between the ice-barge and the schooner was to knock the schooner off her course so suddenly that it was impossible for anything to be done either on the schooner or the ferry-boat to prevent the schooner from running into the ferry-boat, as above stated.

The cause of the collision between the ice-barge and the schooner was a sheer on the part of the barge out of her proper course and into the course of the schooner. It was the duty of the ice-barge, under the circumstances, to keep away from the course of the schooner, and she could have done so by the proper management of her helm. The schooner did nothing to cause the collision between her and the barge; it was the duty of the schooner to hold her course,

and this duty was performed up to the time when the ice-barge ran into her.

No fault on the part of the tug *Adriatic* contributed to the collision.

From these conclusions it results that the owners of the ferry-boat are entitled to recover their damages of the ice-barge *Fitch*. A decree will therefore be entered to that effect in the first entitled cause, with an order of reference to ascertain the amount.

A similar decree will be entered in favor of the libellant in the second suit.

In each of the suits the libel against the *Adriatic* will be dismissed with costs.

BLACKWELL and another v. BRAUN and another.

(*District Court, D. Maryland.* January 16, 1880.)

REMOVAL OF CAUSE—ACT MARCH 3, 1875.—The words, “at the term at which said cause could be first tried,” contained in the act of March 3, 1875, relating to the removal of causes, *held* to mean, “the first term at which the pleadings were in condition for trial; that is to say, when the issues were made up.” *Gurnee v. County of Brunswick*, 1 Hughes, 270, followed.

BOND, J. This is a motion to remand the cause removed from the circuit court of Baltimore city, under the act of March 3, 1875. We agree with the counsel of complainant that the case, the legality of the removal of which we are now to determine, is that case which is made by the amended bill and answer. This amended bill was filed January 26, 1876, and the amended answer was filed on February 4th, and the replication on the twenty-fourth of February, in the same year. The motion to remove was made March 27, 1879. Three years had elapsed since the cause was at issue; nothing more had to be done to the cause. It was ready for hearing. It might have been heard on bill and answer at any term during the whole of three years, but the parties were

not ready. They desired testimony. But it is not the condition of the proof in a cause that determines the right of removal, but the condition of the pleadings; when the cause is at issue it can be tried.

The absence in an equity suit of an outstanding commission does not settle the question whether or not the cause can be tried, any more than the absence of a witness in a suit at law would determine whether it was triable or not. To discover that an equity cause is ready for trial it is not necessary to find that it was ever set for hearing. The cause must be triable before it can be set for hearing. How long before it was heard it might have been heard depends upon the diligence of counsel.

The words of the statute, "at the term at which said cause could be first tried," it might be contended, should be construed to mean either the term at which the issues were made up; or the term at which the judge was present and had an opportunity to hear the case; or the term at which the engagements of counsel allowed them to attend; or the term at which all the requisite witnesses could be procured or their depositions taken; but it has been found that the only reasonable construction to be put upon these words of the statute is the first term at which the pleadings were in condition for trial; that is to say, when the issues were made up.

We think this cause could have been tried at the term when the replication was filed, February 24, 1876, and must adhere to the ruling in the case of *Gurnee v. The County of Brunswick*, 1 Hughes, 270, and will direct the case to be remanded.