

negative. But these decisions are only persuasive, as may be said also of a recent decision in this court by a late eminent judge, conformably to the state rule. The question involved is not one of local law, but of general commercial jurisprudence; hence the duty of the court is imperative to follow the guidance of general judicial opinion concerning it. As to the preponderating weight of this opinion there is scarcely ground for doubt.

In perhaps the majority of the United States, the law is settled that the taking of a note as collateral security for a pre-existing debt is a holding for value. So it is held in England. See 2 C. M. & R. 180; *Percival v. Frampton*, and *Poirier v. Morris*, 2 E. & B. 89. It is stated to be the better doctrine in 3 Kent's Com. *81; in Story on Prom. Notes, § 195; in 1 Parsons' Prom. Notes, 218; and in Byles on Bills, by Sharswood, *28. It has the judicial sanction of Judge Story, in *Swift v. Tyson*, 16 Peters' R., whose adoption of it is distinctly approved by the supreme court in *McCarty v. Root*, 21 How. 439.

Such weight of authority must be regarded in this court as decisive, and judgment is, therefore, entered for the plaintiffs on the case stated.

THE MISSOURI RIVER PACKET CO. v. THE HANNIBAL & ST.
JOSEPH RAILROAD COMPANY.

(Circuit Court, W. D. Missouri. May 10, 1880.)

BRIDGES—MISSISSIPPI AND MISSOURI RIVERS—SECTION 2, ACT OF CONGRESS OF JULY 25, 1866—PASSAGE WAY BETWEEN PIERS—WIDTH OF.—Section 2 of the act of congress of July 25, 1866, authorizing the construction of bridges across the Mississippi river and across the Missouri river at Kansas City, construed as requiring that the passage way for vessels between the piers of any draw-bridge built under said act shall be 160 feet wide in the clear, measured by a line running directly across the channel, and at right angles with the piers of the bridge. Where a bridge is built diagonally across the river, a measurement along the line of the bridge is not the proper measurement.

SAME—SAME—GRANT, WHEN NO PROTECTION—The fact that a bridge has been constructed under said act of congress does not render it a legal structure, except in so far as it conforms to the terms and limitations of the act. If the powers granted by the act were exceeded, or were exercised in a manner different from that provided in the grant of authority, the grant will be no protection.

SAME—BRIDGE CONSTRUCTED WITH TOO NARROW A PASSAGE WAY—PASSING VESSEL—LIABILITY OF OWNER.—Although the width between the piers of such a bridge may be less than the act of congress requires, yet this will not render the owner of the bridge liable for damages to a passing vessel unless the unlawful structure caused or contributed to the injury.

SAME—SAME—SUNKEN PONTOON CONTRIBUTING TO VESSEL'S INJURY.—Where it was alleged that a sunken pontoon, placed and kept in the channel by the defendant, had caused a change in the current of the river which had thrown plaintiff's vessel over against a pier of defendant's bridge, and that the accident was the result of two causes combined, to-wit, the presence in the channel of the pontoons and of the bridge pier, both unlawful structures, *held*, that these facts being established plaintiff could recover.

NAVIGABLE STREAMS—WRECK IN—CHANGE OF CURRENT—LIABILITY OF ONE CAUSING.—Those navigating the river are under no obligation to remove wrecks which may be made in the ordinary and proper course of navigation, but he who, for his own benefit, uses any part of a navigable river, is liable in damages to any party injured, if such use causes a change in the ordinary course of the channel.

SAME—SAME—DUTY TO REMOVE.—If defendant had a right to keep the pontoon in the river in connection with the bridge, and it was sunk by unavoidable accident, defendant was entitled to a reasonable time in which to raise and remove it, but was not at liberty to leave it in the channel for an indefinite period.

COLLISION—CONTRIBUTORY NEGLIGENCE—INSTRUCTION AS TO.—An instruction to the effect that if the plaintiff has proved the facts necessary to make out his case he must recover, "unless unskilfulness or neglect on the part of plaintiff in handling his boat caused or contributed to the collision," *held*, a sufficient charge on the subject of contributory negligence.

NAVIGABLE STREAM—OBSTRUCTION IN—PARTY NOT ENTITLED TO NOTICE TO REMOVE.—A person who places an obstruction in the navigable channel of a river is not entitled to notice to remove the same, or to abate the nuisance caused thereby.

VESSEL—COLLISION WITH BRIDGE—MEASURE OF DAMAGES.—The true rule of damages in suit for injuries done to a vessel by collision, is that the plaintiff shall recover the loss necessarily incurred in repairing the injured vessel, and also for the use of the boat during the time necessary to make the repairs and fit her for business.