

HAZARD v. NATIONAL EXCHANGE BANK OF NEWPORT.

(Circuit Court, D. Rhode Island. January 15, 1886.)

CORPORATION—TRANSFER OF STOCK—ATTACHMENT—RIGHT OF TRANSFEREE.

On December 30, 1875, A. sold certain shares of bank stock to B., and assigned them by a transfer written on the back of the certificate. By the by-laws of the bank, stock was transferable only on the books of the company. On December 14, 1878, the shares were attached by a judgment creditor of A., and sold and transferred to C. Neither the bank nor the creditor had knowledge of the transfer to B. In January, 1880, B. presented his certificate and transfer to the officers of the bank, and demanded a transfer of the stock, which was refused, whereupon he brought suit against the bank for such refusal. *Held*, that the bank was liable in damages for the refusal to transfer the shares.

At Law.

Amasa M. Eaton, for plaintiff.*William P. Sheffield*, for defendant.

CARPENTER, J. This is an action at law to recover damages for the refusal of the defendant to transfer to the plaintiff 75 shares of their capital stock, and to issue to him a certificate thereof. The case has been heard by the court without a jury. The material facts are that on the thirtieth day of December, 1875, the shares stood in the name of Rowland R. Hazard, Jr., and on that day he sold them to the plaintiff, and assigned them by a transfer written on the back of the certificate; that on the twenty-sixth day of June, 1877, the shares were attached in a suit brought in the supreme court of Rhode Island by Philip Caswell, Jr., and on the fourteenth day of December, 1878, they were sold by the sheriff on execution issued in that suit, and were by the defendant corporation transferred on the books to the purchaser; and that in January, 1880, the plaintiff presented his certificate and transfer to the officers of the bank, and demanded that they be transferred to him, and a certificate issued therefor, with which demand the officers refused to comply. Neither the bank nor the attaching creditors received notice of the transfer to the plaintiff, or had knowledge of the same, before the demand was made by him as above stated. It appears that the by-laws of the bank provide that shares of stock shall be transferred only on the books of the corporation.

The question, therefore, is whether an attachment of stock will take precedence of an unrecorded transfer of which the attaching creditor had no notice. The question has been much debated, and has been differently decided in different jurisdictions. I think it is settled for this court, in a case involving the title to shares of stock in a national bank, by the authority of the decision in *Bank v. Lanier*, 11 Wall. 369. See, also, *Continental Nat. Bank v. Eliot Nat. Bank*, 7 Fed. Rep. 369. I decide, therefore, that the defendant corporation is liable in damages for the refusal to transfer the shares. In accordance with the agreement of counsel, the question of damages will stand for further hearing, if not settled by agreement.

UNITED STATES v. MILLER.

(District Court, S. D. New York. January 9, 1886.)

1. SUPERVISING INSPECTORS—AUTHORITY TO MAKE RULES—LIGHTS—REV. ST. § 4405—AMENDMENT OF FEBRUARY, 1885, VOID.

The supervising inspectors of steam-vessels have no authority, under section 4405 of the Revised Statutes, to establish regulations to be observed by vessels, except such as relate to carrying out some of the provisions of title 52. The subject of *lights* to be carried by barges, or other vessels, is not included in any of the provisions of title 52, but is regulated by title 48. *Held*, therefore, that the amendment made February, 1885, to section 20 of general rule 3 of the supervising inspectors, requiring barges in tow to carry a red and a green light, is unauthorized and void.

2. SAME—BARGES—RULE 3, SECTION 4233—PENALTIES—REV. ST. § 4500—CASE STATED.

The master of the coal-barge R. I. was sued for a penalty of \$500, under section 4500, for not carrying colored lights, as prescribed by the amendment to the supervising inspectors' rules passed February, 1885. *Held*, that barges that have neither sails nor masts are not "sail-vessels" within rule 3, § 4233, nor required under any statutory authority to carry colored lights; and for not doing so are not liable to the penalties prescribed by section 4500.

Action to recover fine.

John Proctor Clarke, for the United States.

Platt & Bowers, for defendant.

BROWN, J. This action is brought under section 4500 of the Revised Statutes to recover a fine of \$500 from the master of the coal-barge Rhode Island for not carrying red and green lights on the night of May 4, 1885, while in tow of the steam-tug Narragansett, as prescribed by the amendment made in February, 1885, to section 20 of general rule 3 prescribed by the supervising inspectors. That amendment is as follows:

"All barges in tow of steamers, (except upon the Red River of the North, and rivers whose waters flow into the Gulf of Mexico,) between sunset and sunrise, shall have their signal lights, as required by law, placed in a suitable manner on the bows of the outside forward boats,—namely, a green light on the starboard bow of the starboard barge, and a red light upon the port bow of the port barge,—when two or more barges are being towed side by side. Said lights shall not be less than ten feet above the surface of the water. When being towed singly, said barge shall have the red and green lights as required by law; said lights not to be less than ten feet above the water."

By the agreed statement of facts, it appears that the barge Rhode Island is not a canal-boat, but a barge proper, enrolled as such, and licensed to carry freight and not passengers. She belongs to the Eastern Transportation Line,—a line for many years engaged in the transportation business, and towing, by means of tugs belonging to the company, their own barges and the barges of others. They run from New York to various ports upon the Sound and upon the coast,—such as New Haven, New London, Providence, New Bedford, Boston, and Newport News. The barges in question are single-decked boats; when loaded the deck is about six feet above the water-line. They are usually towed upon hawsers, one behind the other, from