

out of any port situate upon waters which are the boundary between two states, may employ any pilot duly licensed or authorized by the laws of either of the states bounded on such waters to pilot the vessel to or from such port." It is well known that this act grew out of the "pilot war" between New York and New Jersey, in which each state undertook to secure its pilots some exclusive privilege or advantage on the pilot ground in and about the mouth of the Hudson. In the case of *The Panama*, Deady, 31, this court held that the Territory of Washington is a "state," within the purpose and spirit of this legislation; and this ruling was followed in *The Ullock*, 9 Sawy. 641; S. C. 19 Fed. Rep. 207.

Assuming, then, that this section 4236 of the Revised Statutes is applicable to pilotage on the Columbia river, the boundary between Oregon and Washington, this suit cannot be maintained. As between the Oregon pilots, doubtless, the regulation compelling the master of a vessel to take the pilot out of the river that brought him in is valid and binding; but the state cannot compel a vessel in the Columbia river to take an Oregon pilot under any circumstances, or to pay him half or any pilotage, if the master prefers to and does take a Washington pilot. The matter is too plain for argument, and only needs to be stated to be understood. The act of congress is paramount, and no regulation of the state can impair or limit its operation. As applied to the facts and circumstances of this case, it declares, in effect, that the master of any vessel, whether bound in or out of the Columbia river, may take a pilot from either Oregon or Washington, without any reference to the fact of which offered his services first, or whether either of them had served as pilot on the vessel before.

The libel is dismissed, and the respondent is entitled to a decree for costs and disbursements.

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### THE PLYMOUTH.<sup>1</sup>

#### NEAL v. THE PLYMOUTH.

(Circuit Court, D. Maine. February 18, 1886.)

#### **COLLISION—SCHOONER—TUG AND TOW.**

The libellant, while sailing a small boat, was run into by a schooner; the latter vessel being at the time in charge of a tug. *Held*, that, as the evidence showed that the tug and tow would have passed the libellant's boat in safety had he not changed his course, the libel must be dismissed.

In Admiralty.

*H. D. Hadlock*, for appellant.

*Woodman & Thompson*, for appellee.

<sup>1</sup>Reported by Theodore M. Etting, Esq., of the Philadelphia bar.

**COLT, J.** In the early part of the afternoon of October 23, 1884, the libelant, while sailing in a small boat up Casco bay, and standing in towards Falmouth Foreside, was run into by the schooner Julia A. Decker, then in tow and under the control of the steam-tug Plymouth, and bound from Portland to Yarmouth, Maine. The weight of evidence shows that there was but little wind, and that it came in puffs from the south-west. The libelant testifies that he did not see either the tug-boat or schooner until his boat was struck and capsized. The captain of the tug-boat testifies that he was standing near the pilot house, and observed the little sail boat some distance off on the starboard bow; that, as he drew up within two or three hundred yards of her, seeing nobody in her, he ordered Mayberry, the man at the wheel, to blow the whistle, when, no one answering, the whistle was blown a second time. He then hailed the boat, and a man sprung up out from the bottom of the boat, and began at once to paddle towards the vessels until his mast struck the bobstay of the schooner. The captain halloed to him to stop. When the man rose up and paddled, the captain directed Mayberry to starboard the wheel, which was done. When it was found that he would paddle into the tug or schooner, the captain says he directed the tug to stop and back. Capt. Dean's testimony, while it differs in some particulars, such as the distance of the small boat from the tug when the first whistle was sounded, is, upon the whole, confirmed by Mayberry, the man at the wheel, and by Capt. Freeman of the schooner.

The question of negligence in this case turns upon a single point, did the libelant, without warning and suddenly, as the tug was approaching, paddle towards it? This fact is established by the testimony of all the witnesses for the libelees, and is not, I understand, denied by the libelant. The steam-tug was required to keep out of the way of the sailing vessel, provided the latter kept her course. But it was imperative upon the sailing vessel to keep her course, and if she deviates therefrom, and a collision happens, the steamer is not liable therefor. *The Illinois*, 103 U. S. 298; *The R. B. Forbes*, 1 Spr. 328; *The Fannie*, 11 Wall. 238; *The Carroll*, 8 Wall. 302; *The Free State*, 91 U. S. 200. In the present case the steam-tug had a right to assume that the sailing vessel would keep on her course, and for the libelant to take an oar and paddle towards the tug was an act of negligence which relieves the tug from any liability for the collision. Nor can the libelant, upon the facts presented in this case, excuse his act on the ground that the error was committed when the peril was impending and the collision inevitable. The evidence goes to prove that the steam-tug and tow would have passed him in safety had he not rowed towards them.

The decree of the district court dismissing the libel is affirmed.

## PHELPS v. ELLIOTT.

(Circuit Court, S. D. New York. March 31, 1886.)

**1. REMOVAL OF CAUSE—PRACTICE—CASE AT LAW AND EQUITY, HOW TREATED.**

In the courts of the United States the distinction between suits at law and in equity is maintained, and when a suit involving both is removed, then the pleadings must be recast, and the causes of action stated according to the course of procedure on the law and equity sides of the court, respectively, and the causes separated and placed there.

**2. EQUITY PRACTICE—STATE PRACTICE—MAKING COMPLAINT MORE DEFINITE.**

The practice under a state code to require a plaintiff to make his complaint more definite and certain does not apply to the equity side of the circuit court, for the state practice is not adopted in equity.

**3. SAME—AMENDING BILL.**

In a suit in equity defendant has no right to have the plaintiff amend his bill, nor is it required of him to do so to expose defects, or supposed defects, in his case, on motion of defendant.

**4. SAME—COMPELLING PRODUCTION OF RECORD PLEADED IN BILL.**

Where a record in bar to relief is pleaded, the defendant may be required to show it before the plaintiff traverses the plea, or sets it down for argument, but this practice does not extend to the pleading of a judgment or decree of another court in the bill of complaint.

**In Equity.**

*Joseph Larocque* and *R. D. Harris*, for defendant.

*L. L. Kellogg* and *H. B. Titus*, for plaintiff.

**WHEELER, J.** This suit was commenced in the superior court of the city and state, of New York, according to the Code of Procedure of the state, by which the distinctions between legal and equitable remedies is understood to be abolished, and was removed into this court on account of the citizenship of the parties. The complaint, according to the supposed requirements of that Code, sets out the whole of the plaintiff's case. The defendant has answered the complaint, and the plaintiff has filed a replication.

The complaint alleges, in substance, that the plaintiff is assignee in bankruptcy of one Augustine R. McDonald, who had a claim against the United States, which was fraudulently procured to be transferred through one White to him, and on which he obtained an award of \$197,190 in gold, which he assigned to White; that the plaintiff brought suit in the supreme court of the District of Columbia against McDonald and White to obtain the amount of the award, in which one Riggs, a partner of the defendant in banking business, was made receiver of \$107,012.87, avails of the award, which, under order of the court, he invested in bonds of the District of Columbia; that the suit was decided in favor of the defendants by that court, but the decision was reversed on appeal by the supreme court of the United States, and the right of the plaintiff to the avails of the award established, (*Phelps v. McDonald*, 99 U. S. 298;) that during the pendency of the suit McDonald fraudulently procured the bonds of