

THE AMERICA.<sup>1</sup>

## MORAN v. THE AMERICA.

(District Court, E. D. New York. June 22, 1886.)

**1. COLLISION—TWO TUGS—ONE AT REST NEAR LINE OF PIERS—ATTEMPT TO PASS INSIDE—FAULT.**

The tug M. was lying at rest in the East river, some 150 feet from the line of the piers, when the tug A., coming down the river, ported in an attempt to pass between the M. and the piers, and collided with the M. *Held* that, if the original course of the A. would have carried her outside of the M., the A. was in fault for porting. The A. insisted that her porting was when the vessels were close together, and collision was inevitable. *Held*, in that event, that the A. was in fault for not starboarding in time to pass outside of the M.; and, in either view, the A. was solely responsible for the collision.

**2. SAME—VESSEL AT REST—APPLICABILITY OF RULE 19.**

Rule 19 does not apply where the vessel having the other on her starboard hand is at rest.

In Admiralty.

*Carpenter & Mosher*, for libelant.

*Biddle & Ward*, for claimants.

BENEDICT, J. Under the existing circumstances, clearly proved, it was the duty of the America to pass under the stern of the Ida Miller, and not across her bow. I incline to the opinion that the course of the America, when the Ida Miller was seen by her, would have carried her astern of the Ida Miller, and that the immediate cause of the collision was a change from this course, effected by porting the wheel in an effort to pass between the Ida Miller and Pier 4. If such be the fact, the fault of the America which caused the collision was porting her wheel. But if it is true, as insisted in behalf of the America, that the porting of her wheel was when the vessels were close together, and collision inevitable, then, in my opinion, the America was at fault for not starboarding her wheel so as to carry her further out into the river, and astern of the Ida Miller, seen by her to have backed off Pier 4, and to be at rest in the river. Rule 19 is not applicable in a case like this. The Ida Miller came to a rest. When seen to be so at rest, common prudence on the part of the America, as it appears to me, would have prevented an attempt to pass astern of the Ida Miller, when, by holding her course, or, at most, by a turn of her wheel to starboard, she would have passed astern of the Ida Miller, and at the same time assumed her proper course in the river.

Let a decree be entered in favor of the libelant, with an order of reference to ascertain damages.

<sup>1</sup>Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

## BALTIMORE &amp; O. R. Co. v. COUNTY OF JEFFERSON.

(Circuit Court, D. West Virginia. 1886.)

## 1. CONSTITUTIONAL LAW—STATUTES—ONE OBJECT—CONST. W. VA. 1863, ART. 4, § 36.

An act which confers power upon an existing railroad corporation to extend its road through a certain county in the state, and also authorizes that county to subscribe to the capital stock of said railroad, is not repugnant to the article in the state constitution providing that no law shall embrace more than one object, which shall be expressed in the title.

## 2. TAXATION—CONSTITUTIONAL RULES—AID TO RAILROAD.

An act to submit the question of subscription to the stock of a railroad company to all the male tax-payers of the county is not contrary to any inhibition of the constitution, nor is the power thus improperly delegated to a class of the people instead of the whole people, the class named being those who would be affected by the act.

## 3. SAME—ONE RAILROAD TAXED TO AID ANOTHER—REPEAL OF EXEMPTION LAW.

A railroad company is liable to be taxed to furnish the aid voted for another company, although, when the statute authorizing such aid was passed, railroad property was, by a law then existing, exempt from taxation for such purpose; such law being afterwards repealed, and not having been enacted when the company sought to be taxed first obtained a license to do business in the state.

In Chancery. Bill to enjoin the collection of a tax levied to aid the construction of a railroad. Demurrer to bill.

*Caleb Boggess* and *J. A. Hutchinson*, for Baltimore & O. R. Co.

*C. C. Watts* and *Forrest Brown*, for the County of Jefferson.

JACKSON, J. The Baltimore & Ohio Railroad Company, a corporation of the state of Maryland, files its bill against the county of Jefferson, as a corporation of the state of West Virginia, and Eugene Baker, late sheriff, and A. G. Hurst, acting sheriff, of the county, and citizens of this state, to enjoin and restrain the defendant from collecting taxes, which, as the bill alleges, were levied for the purpose of aiding the construction of the Shenandoah Valley Railroad, passing through the county of Jefferson, a rival corporation to that of the plaintiff. To this bill the defendant demurs, and the case is now heard upon the issue presented by the demurrer. It appears from the bill that the legislature of West Virginia, on the twenty-fifth of February, 1870, passed "An act to authorize the Shenandoah Valley Railroad Company to construct their road through the state of West Virginia, to the Potomac river, and also to authorize the board of supervisors of Jefferson county to submit to a vote of the people, at a special election, the question of the subscription to the capital stock of the company." The power of the court is invoked to protect the plaintiff from what it alleges to be "the unjust and illegal claim of the county of Jefferson to charge it with the payment of taxes to discharge the principal and interest of bonds, amounting to \$250,000,