

ever, shows that the trend of the westerly shore to the westward above Four-Mile Point is but slight, and the bend at the point is a very gentle one. It cannot be absolutely necessary, therefore, for a descending tug to occupy the whole channel-way, and from the evidence in the cause it would appear that different pilots of equal experience differ somewhat in their customary course in coming down. The usual course of the Norwich was to draw gradually to the eastward for some time before reaching the buoy. That she did so in this case, so as to pass very near the buoy, is shown by the fact that she passed within 50 feet of the Belle. I cannot find, upon the evidence and an inspection of the chart, that so easterly a course was necessary. Having seen the Belle with her tow long before, and knowing that the Belle, instead of stopping, was continuing her approach with her tow, and seeing their positions as they drew near each other, I think the Norwich was bound not to go so far to eastward, nor so near to the Belle and her tow, as she did. As the ebb-tide sets somewhat to the westward, she was bound to know that the tail of the Belle's tow must be swinging somewhat to the westward of the Belle, so as to render so near an approach to the Belle dangerous to the tow below. This near approach not being absolutely necessary, as I must hold, to her own safety, was therefore imprudent, and unjustifiable.

There is reference in the testimony to a part of the Norwich's tow rubbing some boats at the docks on the western shore; but it also appears that one of the boats in her tow, there being only four abreast, rubbed along the leeward tier of the Belle's tow. As this must have been but a little only to the westward of the line of the buoy, I am inclined to think that the rubbing of some of the boats along the dock on the western side took place afterwards, and as the result of some disarrangement of her tow after the Norwich had stopped. The circumstances are so obscurely stated that I cannot give this evidence any controlling weight. Had the Norwich approached more slowly towards the Belle, whose dangerous position she saw; had she gone, as she might have gone, further to the westward, I think her own tow would have come down safely and straight in a line with the current; and that she would have passed safely and without collision, astern of the tow of the Belle.

No further reference as to damages being desired, the damages are found to be \$367.68, with interest from September 22d. This includes demurrage for nine days at the rate of \$10 per day; which is a reasonable amount for the detention of the boat with the several men and horses attached. For that sum, with interest and costs, the libellant is entitled to a decree against both vessels in the usual form.

CHAPPELL v. UNITED STATES.

(Circuit Court, D. Maryland. April 19, 1888.)

1. COURTS—FEDERAL CIRCUIT COURTS—CLAIMS AGAINST UNITED STATES—EMINENT DOMAIN.

Under act of March 3, 1887, c. 359, the circuit court has jurisdiction of a claim exceeding \$1,000, for compensation to the owner of land, who, by command of the light-house board, under authority of congress has been prevented from making use of his land lying between two range lights, the use intended by him being one which would have obstructed the lights. Such a restriction upon the use of private property, if authorized by the United States, entitles the owner to compensation.

2. SAME—PLEADING.

The act of congress of March 3, 1887, c. 359, having given jurisdiction to the circuit court of all claims against the United States exceeding \$1,000, founded upon contracts, express or implied, or for damages, liquidated or unliquidated, in cases not sounding in tort, if the facts alleged in claimant's petition show that the claim is not founded upon torts of officers of the government, but on acts of theirs which were authorized by legislation of congress, it is immaterial whether the petition claims compensation as upon an implied contract or as for damages. If the facts alleged show a case for compensation, the court is to give judgment upon the facts and the law, and without regard to forms of action.

(Syllabus by the Court.)

At Law. Action for compensation for use of land. On demurrer.

F. P. Stevens, for plaintiff.

Thomas G. Hayes, U. S. Dist. Atty., for defendant.

MORRIS, J. This is a suit against the United States under act of March 3, 1887, to recover compensation exceeding \$1,000 for the use of plaintiff's land at Hawkins' point, on the Patapsco river. The nature of the case upon which the plaintiff's claim is based is this: The United States light-house board by authority of congress, and with money appropriated by congress for that purpose, has erected two light-houses,—one in the water at Hawkins' point, in front of the shore of plaintiff's land, and the other on Leading point, about one mile back in a north-westerly direction, upon land of some one else other than the plaintiff. They are range lights to enable vessels to direct their course, so as to keep in the Brewerton channel as excavated by the United States, when coming up or going down the river to and from the port of Baltimore. For that use it is requisite that there should be no intervening object between the light-houses; the intention being that when a vessel is on her true course in the channel the rear light on Leading point shall, in the night-time, be seen in a line with and directly above the front light on Hawkins' point, and similarly in the day-time the signal balls shall be so seen. The land of the plaintiff in respect of which he claims compensation lies between the two lights and is used by him, according to his petition, as a site for buildings for manufacturing purposes. He claims that the United States has required of him that so much of his land as lies within the range between the two light-houses, and for a space not