

McCORMICK v. THE GLADYS.¹

(District Court, E. D. New York. April 18, 1888.)

1. COLLISION—STEAM AND SAIL—TOWS.

A collision occurred in the Hudson river, in broad daylight and fair weather, between a tow, bound down stream, and a schooner, bound up. The schooner was approaching the tow under jib alone, at a rate of about four miles an hour, whereas the tow thought she was at anchor, and consequently kept up her own speed and course towards the schooner until collision was imminent. *Held*, that the cause of the collision was want of proper lookout on the tow-boat, for which she was liable.

2. SAME.

When collision was imminent, the schooner was luffed into the wind, in an effort to stop her headway, and lessen the damage likely to ensue. *Held*, no fault on the part of the schooner.

In Admiralty. Libel for damages.

Carpenter & Mosher, for libelant.

Wing, Shoudy & Putnam, for the schooner.

BENEDICT, J. This is an action by the owner of the steam canal-boat Deland, and the canal-boat J. W. Brakey, to recover damages for a collision which occurred between the schooner Gladys and the canal-boat J. W. Brakey, laden with a cargo of corn, and at that time in tow of the Deland, bound down the North river above Stevens Point, on the westerly side of the Hudson river. The collision occurred in broad daylight, in fair weather. It was no doubt caused by a mistake on the part of those in charge of the tow, in supposing that the schooner Gladys, seen ahead of them, was at anchor, when in fact she was sailing under a jib, and approaching the tow at a speed of about four knots an hour. Under this mistake the tow kept up her speed and course towards the schooner, until a collision was imminent. When collision was imminent, and not before, the schooner was luffed into the wind, and her jib let go. This was not an effort on the part of the schooner to pass across the course of the tug, but simply an effort to stop the headway of the schooner, when keeping on would only tend to increase the damage caused by the collision. It was no violation of duty on the part of the schooner to come into the wind as she did. The obligation to hold her course had ceased; that duty had been performed. When the schooner came into the wind, it had become her duty to do all she could to lessen the damages likely to result, and luffing was the best course to accomplish such result. The luffing, therefore, was no fault on the part of the sailing vessel, and it did not cause the collision. The cause of the collision was the steam canal-boat's omission to take seasonable steps to avoid the sailing vessel, and the cause of her failure to do this was want of a proper lookout. The libel must be dismissed, and with costs.

¹Reported by Edward G. Benedict, Esq., of the New York bar.

COUNTY COURT OF TAYLOR COUNTY *et al* v. BALTIMORE & O. R.
Co. *et al*.

(Circuit Court, D. West Virginia. June 16, 1888.)

1. REMOVAL OF CAUSES—CITIZENSHIP—CORPORATIONS—FOREIGN—BALTIMORE & OHIO RAILROAD COMPANY IN WEST VIRGINIA.

The Baltimore & Ohio Railroad Company is a Maryland corporation, and not a corporation created by any enabling act of Virginia or West Virginia; the Virginia act of 1827 merely conferring upon such company a license to transact business in the state, and is entitled to remove a cause begun in the West Virginia courts to the Federal courts on the ground of citizenship.

2. SAME—SEPARABLE CONTROVERSY.

A bill was filed, the objects of which were—*First*, to restrain the B. & O. company from using or transferring 1,160 shares of stock of the G. & G. Company; *second*, if the stock had not been issued, to restrain its issuance; *third*, to enjoin the collection or negotiation of bonds transferred by the G. & G. Company to the B. & O. Company. It appeared that the G. & G. Company had issued the stock, and transferred the bonds to the B. & O. Company, before the commencement of the action. The G. & G. Company's answer adopted the B. & O.'s answer, and showed that it had no interest in the controversy. *Held* that, as it was unnecessary to notice the second prayer, the stock having been issued, and as the only relief which could be granted was under the first and third prayers, relating solely to the B. & O. Company, the action was separable, and the G. & G. Company not a necessary party.

3. SAME—LOCAL PREJUDICE—PLEA.

Under Acts Cong. 1887, c. 373, § 2, cl. 4, providing "that a removal shall take place when it is made to appear to the circuit court that from prejudice or local influence it [defendant] will not be able to obtain justice" in the state courts, a plea by plaintiffs simply denying defendant's belief in the existence of such prejudice or local influence is insufficient, and raises no issue on that question, as the plea should affirm that it does not exist.¹

4. CORPORATIONS—BOARD OF DIRECTORS—NOTICE OF SPECIAL MEETING—RATIFICATION.

Where action taken by a board of directors of a corporation at a special meeting is ratified at a subsequent special meeting, of which all the members of the board had legal notice, and at the next regular meeting, "The minutes of the last two meetings were read and approved," it is immaterial whether all the members of the board were legally notified of such first special meeting, in the absence of fraud or conspiracy on the part of the officers or directors.

5. SAME—INTEREST OF DIRECTOR IN CORPORATE ACT.

The action of a board of directors of a corporation in delivering corporate stock in payment of a portion of its indebtedness, and consolidating the remainder into a mortgage on the corporate property, is not rendered illegal by the fact that members of the board had become guarantors for further advances made to the corporation after it had exhausted its credit, which advances were to be paid by the delivery of the stock.

6. SAME—DEALINGS BY ONE CORPORATION IN STOCK OF ANOTHER—ADVANCES ON SECURITY OF STOCK.

Where one corporation makes advances to another, taking as collateral security mortgage bonds of the latter, which it is unable to redeem, defaulting in the payment of the interest, and thereafter such corporation makes further advances secured by bonds and stock of the latter corporation, such transaction is not within the prohibition of Code W. Va. forbidding one corporation to subscribe for or purchase stocks, bonds, or securities of another corporation except in payment of a *bona fide* debt.

¹Respecting the removal of causes from state to federal court, under the act of 1837, on the grounds of prejudice and local influence, and the sufficiency of pleading and affidavit in obtaining such removal, see *Short v. Railroad Co.*, 33 Fed. Rep. 114; *Hills v. Railroad Co.*, Id. 81; *Short v. Railroad Co.*, 34 Fed. Rep. 225.