

in the other testimony indicating that their evidence in that respect is incredible. The America held on the course which would take her from the fourth situation, where she was, to the right of the other, as required by inspectors' rule II. She slowed while awaiting an answer to her single whistle, and reversed when the change of lights and two-whistle signals of the Talisman indicated that the latter was about to disregard the rules, and navigate so as to involve risk of collision. The America therefore fulfilled her whole duty, unless she was also bound, as the district judge found, to starboard her wheel as soon as the Talisman indicated an intention to cross her bows. It has been repeatedly held that there is no such thing as right of way to run into unnecessary collisions, and a careful examination of the situation after the event no doubt shows that, had the America changed her course by starboarding, the collision might have been avoided. In determining, however, whether or not it was faulty navigation not to make such change, the situation must be considered from the point of view of the individual who is first called upon to decide the question. Rules prescribing courses are enacted for the purpose of avoiding collision, and are framed on the theory that a scrupulous adherence to them will render such a mishap impossible. Before a navigator departs from a rule directing him to hold a particular course, the existing situation should afford reasonable assurance that such a change will prevent an accident otherwise imminent, and will not itself tend to produce the very mishap it was intended to avoid by co-operating with a belated effort on the part of the other vessel to return to her true course, or to reverse,—an effort induced perhaps by the very danger-signal he has given. Tried by this test, I do not think the facts in this case warrant a finding that the America was in fault for not shifting her helm to starboard at the moment the lights and whistles of the Talisman indicated an intent to cross her bows. The Talisman is therefore solely in fault. Decree accordingly, with costs.

THE POMONA.

LOUISIANA & T. R. & S. S. Co. v. THE POMONA AND HER CARGO.

(*District Court, D. South Carolina. March 2, 1889.*)

SALVAGE—DISTRIBUTION OF AWARD.

Where a rescue is made by a steam-ship, and there is no danger or risk or extra trouble to the crew, and \$2,000 are awarded as salvage, including the charge for a tug, the owners should be awarded four-fifths of that sum. And the master having undertaken the service on his own responsibility, and having been commended for it, is entitled to \$200. The remainder should be divided among the other officers and employes,—the steam-ship having no passengers,—in proportion to their wages.

In Admiralty. On distribution of an award for salvage.

Barker, Gilliland & Fitzsimons, for libellant.
T. M. Mordecai, for claimant.

SIMONTON, J. By decree filed 29th January, 1889, libelants were allowed as salvage \$2,000, including the charge of the tug for towing the *Pomona* over the bar into the harbor of Charleston. *The Pomona*, ante, 444.

The only remaining question is as to the distribution of this sum among the salvors. The crew of the steam-ship *New York* have intervened, setting up their claim for part of the award. Under the rule once prevailing in admiralty, the owners of the salving vessel could not receive more than one-third of the award, (*The Blaireau*, 2 Cranch, 240; *The Henry Ewbank*, 1 Sumn. 426; *The Cora*, 2 Wash. C. C. 80;) unless there were unusual circumstances of peril to the salving vessel, (*The Henry Ewbank*.) In *The Island City*, 1 Black, 129, it seemed to be admitted that where the salving vessel was a steamer, and so capable of rendering the most efficient aid, her proportion should be greater; and this is recognized in *The Raikes*, 1 Hagg. Adm. 246; *The Earl Grey*, 3 Hagg. Adm. 363; *The Beulah*, 1 W. Rob. 477; *The William Penn*, 2 Hughes, 144. In *The C. W. Ring*, 2 Hughes, 99, decided by Judge BRYAN, late judge of this district, as referee, before his court was organized, in 1866, the question was considered, and the proportion of the salving vessel—a steam-ship—in the award was raised to three-fifths. In *The Leipsic*, 5 Fed. Rep. 108, Judge CHOATE, of New York, had this question before him. The circumstances of that case were almost the same as in the case of *The Pomona*. A steam-ship, disabled because of a broken shaft, dependent upon her sails, which were uninjured, was rescued by a passing steamer; there being no present imminent danger to the salving vessel or her crew, the essential feature of the service being its prompt and efficient action. Judge CHOATE allowed the salving steamer three-fifths of the award. He adopted the same rule in *The Adirondack*, 5 Fed. Rep. 215. In the present case there was no danger, or risk, or extra trouble to the crew. The service was by the ship entirely. The loss of time was hers only. I will increase the proportion, and make it four-fifths. The next question is as to the apportionment among the officers and crew. The master of the *New York*, upon his own responsibility, undertook the service. He has been commended for it. Following the cases, especially the two of Judge CHOATE and *The Henry Ewbank*, supra, let the master of the *New York* have \$200. Let the remainder of the one-fifth be divided among the other officers and the persons employed upon the steam-ship *New York*, (she had no passengers) in the proportion of the wages received by them; the counsel fees of this suit to libellant's proctor to be charged on the fund.

BELDING v. GAINES *et al.*¹

(Circuit Court, E. D. Arkansas. March 1, 1887.)

COURTS—FEDERAL COURTS—CITIZENSHIP—COLLUSIVE JOINDER—PARTITION.

Complainant, a citizen of Texas, the heir of B., sued his co-heirs, citizens of Arkansas, claiming from the first defendant, who had obtained the legal title to the ancestor's property, a one-fourth interest, and from the other two defendants, partition. The last two defendants filed a cross-bill, claiming separate ownerships of one-fourth interest, and also partition. *Held* that, although the interests of the last two defendants and that of complainant were the same as against defendant who claimed the legal title, their interests were not so identical in other respects as to require their being joined as complainants; and a plea in abatement to the jurisdiction on the ground that they were collusively made defendants to give the federal court jurisdiction, should be overruled.

In Equity. On plea in abatement to the jurisdiction.

U. M. & G. B. Rose, for plaintiff.

M. W. Benjamin, for defendants.

Before BREWER and CALDWELL, JJ.

BREWER, J. The complainant is a citizen of Texas, the defendants all citizens of Arkansas; *prima facie*, therefore, this court has jurisdiction. But these facts appear, and upon them a plea in abatement to the jurisdiction has been filed. One Belding died, having the equitable title to a tract of land in Arkansas, and leaving four heirs. One of them, a defendant herein, obtained the legal title. The complainant is one of the heirs, and files this bill claiming as against such defendant a one-fourth interest in the property, and as against all the defendants—the other heirs being made defendants—partition. Such other heirs file a cross-bill, claiming their separate ownerships of one-fourth interest, and also asking partition. It is insisted that the interests of these two defendants are the same as those of the complainant, and that they are collusively joined as defendants for the purpose of giving this court jurisdiction; that the court should ignore the action of the pleader, rearrange the *status* of the parties litigant, and place such last-named defendants on the side of the complainant; and, so placing them, there would be a suit between citizens of this state, of which this court could not take jurisdiction. I think this is a mistake. It may be true that the complainant and the two defendants are alike interested in divesting the other defendant of whatever right and protection he may claim from holding the legal title, but there their identity of interest ceases. Each seeks to recover for himself, and not for the three jointly, his one-fourth share of the property. Partition implies a setting apart to each owner his hitherto undivided interest, and each owner has a separate interest in establishing the fact and extent of his title, and in securing his separate share of the estate. Take an ordinary law action. There must be a unity of interest, not merely in the subject-matter of the action, but also in the relief sought,

¹Publication delayed by failure to obtain copy of opinion at time of its delivery.