CHAPTER XIII

RULES AS TO NARROW CHANNELS, SPECIAL CIRCUMSTANCES, AND GENERAL PRECAUTIONS

THE NARROW CHANNEL RULE

136. In narrow channels each steamer must keep to the right-hand side.

Article 25 provides that in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

This is really a branch of the port-helm rule. The latter rule applies when the vessels are meeting end on, no matter whether they are in a harbor or a narrow channel, no matter whether they are following a channel or crossing it. The starboard-hand rule emphasizes this duty as to narrow channels. It means that each must keep along its own right-hand side, no matter how the relative bearings may be from sinuosities or other causes.[1]

This rule was added to the inland rules by the act of June 7, 1897, though it had been in the International Rules

§ 136. [1] VICTORY, 168 U. S. 410, 18 Sup. Ct. 149, 42 L. Ed. 519; Arrow, 214 Fed. 743, 131 C. C. A. 49; Hokendaqua, 251 Fed. 562, 163 C. C. A. 556.

since the revision of 1885. The courts, however, are rigid in enforcing it.

The Spearman [2] arose on the Danube, under a local rule substantially similar. The descending vessel took the left bank, and was held in fault for a collision with an ascending vessel, though the absence of lights on the latter might have contributed to the accident.

The Pekin [3] was a collision case in the river Whang Poo, in China, at a point where there was a sharp bend. The Normandie, in descending, kept to the starboard side, and the Pekin was ascending. This threw the Pekin on the Normandie's starboard bow on account of the bend, and she therefore claimed that it was a crossing case, and that under rule 19 she had the right of way. The House of Lords, however, held that the course must be judged, not by the accidental bearing at a bend, but by the general channel course, and that the Pekin was to blame for cutting across to the Normandie's side.

Another interesting English case in which the rule was applied was the Oporto.[4]

In the Spiegel,[5] Judge Coxe applied the rule to a collision on the Erie Canal at night, placing the responsibility on a boat which was on the wrong side.

The rule applies in fogs as well as in clear weather.[6]

What Constitutes a Narrow Channel

This is not easy to define. In the leading case of the RHONDDA,[7] the House of Lords held that the Straits of Messina were included in the term, and in the Leverington [8]

[2] 10 A. C. 276.
[3] [1897] A. C. 532.
[4] [1897] P. 249.
[5] (D. C.) 84 Fed. 1002.
[6] Yarmouth (D. C.) 100 Fed. 667; Newport News, 105 Fed. 389, 44 C. C. A. 541.
[7] 8 A. C. 549.
[8] 11 P. D. 117. Other illustrations from the English decisions: Clydach, 5 Asp. M. C. 336 (Falmouth entrance); Whitlieburn, 9 Asp.

it was held that the Cardiff Drain, where it joins the entrance channel to the Roath Basin, came within the designation.

In Occidental & O. S. S. Co. v. Smith,[9] it was held to include the entrance to San Francisco harbor. So with Providence river.[10]

As the only object of the rule is to avoid collision, the common sense of the matter would seem to be that, as it does not apply to all channels, but only to narrow channels, a channel is not narrow, in the sense of the term, unless vessels approaching each other in it are compelled to approach on such lines as would involve "risk of collision" in the sense of the navigation rules. If it is wide enough to permit two steamers to pass at a safe distance without the necessity of exchanging signals, the rule would not apply; and it would be idle to require two steamers to cross to the other side. But if it is so narrow by nature, or so narrowed by anchored vessels or other causes, as to bring approaching steamers on lines in dangerous proximity, and require interchange of signals, then the rule would apply.

It does not apply to harbor navigation. Steamers moving about promiscuously in harbors, often from one point to another on the same side, are not expected to cross backwards and forwards in the attempt to observe the rule.[11]

It will be observed that this rule is very cautiously word-

M. C. 154 (Scheldt at Antwerp); Glengariff, [1905] P. 106 (Queenstown harbor entrance): Kaiser Wilhelm der Grosse, [1907] P. 259 (Cherbourg harbor entrance).

[9] 74 Fed. 261, 20 C. C. A. 419.

[10] Berkshire, 74 Fed. 906, 21 C. C. A. 169. Other illustrations from American decisions: Acilia (D. C.) 108 Fed. 975; Id., 120 Fed. 455, 56 C. C. A. 605 (Brewerton channel); Maling (D. C.) 110 Fed. 227, 237 (Cherry Island channel in the Delaware); Dauntless (D. C.) 121 Fed. 420; Id., 129 Fed. 715, 64 C. C. A. 243 (Mokelumne river); Vera (D. C.) 224 Fed. 998; Id., 226 Fed. 369, 141 C. C. A. 199 (President Roads).

[11] Islander, 152 Fed. 385, 81 C. C. A. 511; No. 4, 161 Fed. 847, 88 C. C. A. 665; Wrestler, 232 Fed. 448, 146 C. C. A. 442.

ed. It only applies when it is "safe and practicable," and it only requires the "ship to keep to the right of the fairway or mid-channel." This means the water available for navigation at the time. For instance, if half of a narrow channel was obstructed by anchored vessels, the "fairway or mid-channel" would mean the part still unobstructed, and require the vessel to keep on her half of the channel still remaining, though that was not on the starboard side of the ordinary navigable channel. It would not be "safe and practicable" to do otherwise.[12]

Neither the Lake Rules nor the Mississippi Valley Rules contain this provision, but they have their own rules for narrow channels, the substance of which is that the boat with the current has the right of way. In the Lake Rules she must give the first signal, but in the Mississippi Valley Rules the ascending steamer does so.

But under the Mississippi Valley Rules the courts require each boat to keep to the right side as a matter of careful navigation.[13]

THE GENERAL PRUDENTIAL RULE, OR SPECIAL CIRCUMSTANCE RULE

137. The general prudential rule, or special circumstance rule, allows departure from the other rules, but only in extreme cases.

Article 27 provides that in obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may

[12] On the meaning of these words, see Smith v. Voss, 2 Hurl. & N. 97; RHONDDA, 8 A. C. 549; Clydach, 5 Asp. 336; Leverington, 11 P. D. 117; Oliver (D. C.) 22 Fed. 849; Blue Bell, [1895] P. 242; Glengariff, [1905] P. 106; Clutha Boat 147, [1909] P. 36; Turquoise, [1908] P. 148.

[13] Jakobsen v. Springer, 87 Fed. 948, 31 C. C. A. 315; Albert Dumois, 177 U. S. 240, 20 Sup. Ct. 595, 44 L. Ed. 751.

render a departure from the above necessary in order to avoid immediate danger.

In the multitude of possible situations in which vessels may find themselves in relation to each other, there are necessarily occasional cases in which obstinate adherence to the rule would cause collision, when disregard of it might prevent it. This rule is made for such cases. These exceptional circumstances usually arise at the last moment, so that this rule has well been designated the rule of "sauve qui peut." It cannot be used to justify violations of the other rules, or to operate as a repeal of them. The certainty resulting from the enforcement of established rules is too important to be jeopardized by exceptional cases. Any rule of law, no matter how beneficial in its general operation, may work occasional hardship. Hence the courts lean in favor of applying the regular rules, and permit departure from them only in the plainest cases.

The principle which governs such cases existed and was applied long before it was enacted in the present rule. It is well expressed by Dr. Lushington in the John Buddle,[14] where he said: "All rules are framed for the benefit of ships navigating the seas, and, no doubt, circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule, however wisely framed. It is at the same time of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such deviation necessary are most distinctly proved and established; otherwise vessels would always be in doubt and doing wrong."

In the Khedive,[15] two vessels were approaching each other green light to green light, when suddenly one ported, thereby establishing risk of collision. The captain of the

§ 137. [14] 5 Notes of Cases, 387.

[15] 5 A. C. 876. For a somewhat similar case, see the Kingston (D. C.) 173 Fed. 992.

other starboarded, under the belief that this would bring the vessels parallel, and at least ease the blow. He did not reverse, as required by rule 23 as then worded. It was contended for him that he was justified under the special circumstances, but the House of Lords held that the stop and back rule governed, and that this rule could not be invoked to excuse noncompliance with the stop and back rule.

In the Benares,[16] a vessel saw a green light a little on her port bow. When they came close together, she saw the port side, but no red light where it should have been. She thereupon starboarded, and went full speed ahead, instead of backing and reversing. The court held that it was an exceptional case, governed by the general prudential rule, and that she had done right; and that a departure is justified when it is "the one chance still left of avoiding danger which otherwise was inevitable." [17]

The American courts have been equally reluctant to admit exceptions. In the Clara Davidson,[18] the court said: "But I do not find myself at liberty to ignore the inquiry whether a statutory rule of navigation was violated by the schooner. Those rules are the law of laws in cases of collision. They admit of no option or choice. No navigator is at liberty to set up his discretion against them. If these rules were subject to the caprice or election of masters and pilots, they would be not only useless, but worse than useless. These rules are imperative. They yield to necessity, indeed, but only to actual and obvious necessity. It is not stating the principle too strongly to say that nothing but imperious necessity, or some overpowering vis major, will excuse a sail vessel in changing her course when in the presence of a steamer in motion; that is, obeying the duty resting upon it or keeping out of the way. If the statutory rules of navigation were only optionally binding, we should

[16] 9 P. D. 16. See, also, Allan & Flora, 14 L. T. (N. S.) 860.
[17] See, also, Mourne, [1901] P. 68; Test, 5 Notes of Cases, 276.
[18] (D. C.) 24 Fed. 763.

be launched upon an unbounded sea of inquiry in every collision case, without rudder or compass, and be at the mercy of all the fogs and mists that would be made to envelop the plainest case, not only from conflicting evidence as to the facts, but from the hopelessly conflicting speculations and hypotheses of witnesses and experts as to what ought to or might have been done before, during, and after the event. The statutory regulations that have been wisely and charitably devised for the governance of mariners furnish an admirable chart by which the courts may disentangle themselves from conflicting testimony and speculation, and arrive at just conclusions in collision cases."

In the BREAKWATER,[19] where, in a crossing case, the privileged vessel kept her course and speed, and was attacked because she did not reverse, the court said: "Where rules of this description are adopted for the guidance of seamen who are unlearned in the law, and unaccustomed to nice distinctions, exceptions should be admitted with great caution, and only when imperatively required by the special circumstances mentioned in rule 24, which may exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger. The moment the observance or nonobservance of a rule becomes a matter of doubt or discretion, there is manifest danger, for the judgment of one pilot may lead him to observe the rule, while that of the other may lead him to disregard it. The theory of the claimant that a vessel at rest has no right to start from her wharf in sight of an approaching vessel, and thereby impose upon the latter the obligation to avoid her, is manifestly untenable, and would impose a wholly unnecessary burden upon the navigation of a great port like that of New York. In the particular case, too, the signals exchanged between the steamers indicated clearly that the Breakwater accepted the situation and the obligation

[19] 155 U. S. 252, 15 Sup. Ct. 99, 39 L. Ed. 139.

imposed upon her by the starboard-hand rule, and was bound to take prompt measures to discharge herself of such obligation."

In the Non Pareille,[20] the court said: "There is no such thing as a right of way to run into unnecessary collision. The rules of navigation are for the purpose of avoiding collision, not to justify either vessel incurring a collision unnecessarily. The supreme duty is to keep out of collision. The duties of each vessel are defined with reference to that object, and, in the presence of immediate danger, both, under rule 24, are bound to give way, and to depart from the usual rule, when adherence to that rule would inevitably bring on collision, which a departure from the rules would plainly avoid."

It is plain, therefore, that he who disregards the regular rules, and appeals to this one, shoulders a heavy burden. He is like the whist player who fails to return his partner's trump lead. He may be able to justify it, but explanations are in order.[21]

As vessels maneuvering around slips are not on regular courses, their navigation is usually governed by this rule.[22]

Collisions due to extinguishing the lights of vessels under governmental orders during war come under this rule.[23]

[20] (D. C.) 33 Fed. 524. See, also, Hercules, 51 Fed. 452; Mauch Chunk, 154 Fed. 182, 83 C. C. A. 276; John I. Clark (D. C.) 199 Fed. 981.

[21] Jakobsen v. Springer, 87 Fed. 948, 31 C. C. A. 315; Albert Dumois, 177 U. S. 240, 20 Sup. Ct. 595, 44 L. Ed. 751; Concordia, L. R. 1 A. & E. 93.

[22] Transfer No. 17, 254 Fed. 673, 166 C. C. A. 171; M. Moran, 254 Fed. 766, 166 C. C. A. 212.

[23] Algol, [1918] P. 7; Hydra, [1918] P. 78.

SOUND SIGNALS

138. A steamer must indicate to other vessels in sight the course taken by her, by giving sound signals.

Article 28 prescribes these, but they have been explained in a previous connection, and need not be repeated.

THE GENERAL PRECAUTION RULE

139. Proper precautions, other than those required by the rules, are not to be neglected.

Article 29 provides that nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case.

This rule is intended as a supplement for the other rules, not as a substitute for them. It covers many cases not expressly included in the other rules.

SAME—LOOKOUTS

140. The law is rigid in requiring a competent lookout, charged with that sole duty.

A common instance is the necessity of a lookout. Both the English and American courts have said as emphatically as language can express it that vessels must have a competent lookout stationed where he can best see, and that he must be detailed to that sole duty. Neither the master nor helmsman, if engaged in their regular duties, can act as such, for they have troubles enough of their own. A good English illustration is the Glannibanta.[24]

§ 140. [24] 1 P. D. 283.

In Clyde Nav. Co. v. Barclay,[25] the steamer, which was on her trial trip, was in charge of a pilot, but an officer also was on the bridge, and there was another man, not properly qualified, on the lookout. The House of Lords held this sufficient, and that the bridge was the proper place for the lookout under the circumstances.

The decisions of the American courts have been numerous and emphatic. In the MANHASSET,[26] the leading cases on the subject were reviewed, and the difference between the duties of the master and lookout clearly put. In that case a ferryboat crossing Norfolk harbor on a stormy night was condemned for having no one on duty except the master at the wheel.

In fact, circumstances may arise where more than one lookout is necessary. Large steamers have been held in fault for not having two, if it appears that objects were not seen as soon as possible.[27]

Under some circumstances—as where a vessel is backing, or another vessel is overtaking—there should be a lookout astern as well as forward.[28]

This rule as to lookouts must not be carried to a reductio ad absurdum. If the approaching vessels see each other an ample distance apart to take all proper steps, then the object of having a lookout is accomplished, and the absence of a man specially detailed and stationed is a fault not contributory, and therefore immaterial.[29]

[25] 1 A. C. 790.

[26] (D. C.) 34 Fed. 408. See, also, J. G. Gilchrist (D. C.) 173 Fed. 666; Id., 183 Fed. 105, 105 C. C. A. 397; Wilbert L. Smith (D. C.) 217 Fed. 981; Union S. S. Co. v. Latz, 223 Fed. 402, 138 C. C. A. 638.

[27] BELGENLAND, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; Oregon, 158 U. S. 186, 15 Sup. Ct. 804, 39 L. Ed. 943.

[28] Nevada, 106 U. S. 154, 1 Sup. Ct. 234, 27 L. Ed. 149; Sarmatian (C. C.) 2 Fed. 911; Bernicia (D. C.) 122 Fed. 886.

[29] Farragut, 10 Wall. 338, 19 L. Ed. 946; Blue Jacket, 144 U. S.

The proper station for a lookout is where he can have an unobstructed view. It must be a place unobstructed by the sails, and is usually on the forecastle, or near the eyes of the ship.[30]

In the case of steamers, although courts discourage the practice of having the lookout in the pilot house, his proper location is a question of fact, not of law. The dissenting opinion of Chief Justice Taney in Haney v. Baltimore Steam-Packet Co.,[31] puts the doctrine as follows: "It has been argued that the lookout ought to have been in the bow, and some passages in the opinions of this court in former cases are relied on to support this objection. But the language used by the court may always be construed with reference to the facts in the particular case of which they are speaking, and the character and description of the vessel. What is the most suitable place for a lookout is obviously a question of fact, depending upon the construction and rig of the vessel, the navigation in which she is engaged, the climate and weather to which she is exposed, and the hazards she is likely to encounter; and must, like every other question of fact, be determined by the court upon the testimony of witnesses—that is, upon the testimony of nautical men of experience and judgment. It cannot, in the nature of things, be judicially known to the court as a matter of law."

The courts have ruled that this doctrine applies to all steamers, large and small, both as to the location of the lookout and the necessity of having a man independent of the master and wheelsman. In the case of tugs it is a rule

371, 12 Sup. Ct. 711, 36 L. Ed. 469; HERCULES, 80 Fed. 998, 26 C. C. A. 301; Elk, 102 Fed. 697, 42 C. C. A. 598; Columbia (D. C.) 104 Fed. 105; Fannie Hayden (D. C.) 137 Fed. 280.

[30] Java, 14 Blatchf. 524, Fed. Cas. No. 7,233; John Pridgeon, Jr. (D. C.) 38 Fed. 261; Bendo (D. C.) 44 Fed. 439, 444; Vedamore, 137 Fed. 844, 70 C. C. A. 342; Prinz Oskar, 219 Fed. 483, 135 C. C. A. 195.

[31] 23 How. 292, 16 L. Ed. 562.

more honored in the breach than in the observance. There is some excuse for it, as the pilot house of the tug is so far forward and so elevated as usually to afford the best view. And, in addition, the stem of a tug being low down in the water, unlike the lofty stems of large vessels, is so wet a place in a heavy sea that a lookout could do no good. Hence the courts, though insisting on their rule even as to tugs, especially in harbor work, and requiring strong proof to satisfy them that the want of a special lookout did no harm, are more lenient in such cases than in cases of large steamers. The instances in the books where tugs have been condemned in this respect were cases where the accident was directly traceable to such neglect.[32]

SAME—ANCHORED VESSELS

141. When a moving vessel runs into a vessel anchored in a lawful place, with proper lights showing, or a bell ringing, if such lights or bell are required by rule, and with a proper anchor watch, the presumptions are all against the moving vessel, and she is presumed to be in fault, unless she exonerates herself.

The law in relation to collision with anchored vessels can best be classified under this twenty-ninth rule. The presumptions against the moving vessel in such a case are very strong. Practically her only defense is vis major, or inevitable accident, in the absence of fault on the part of the anchored vessel.[33]

[32] City of Philadelphia v. Gavagnin, 62 Fed. 617, 10 C. C. A. 552; George W. Childs (D. C.) 67 Fed. 271. As instances where tugs were held blameless on this score, see Caro (D. C.) 23 Fed. 734; Bendo (D. C.) 44 Fed. 439; R. R. Kirkland (D. C.) 48 Fed. 760; Blue Jacket, 144 U. S. 371, 12 Sup. Ct. 711, 36 L. Ed. 469; HERCULES, 80 Fed. 998, 26 C. C. A. 301.

§ 141. [33] Le Lion (D. C.) 84 Fed. 1011; Minnie (D. C.) 87 Fed.

If, however, there is any maneuver by which an anchored vessel, on seeing a collision imminent, can avoid or lighten it, she is required to do so. Sometimes the courts have held anchored vessels in such case required to sheer, or to let out additional chain, if they can do so.[34]

Anchoring in Channels

How far it is negligent in an anchored vessel to anchor in a channel of navigation is a question of fact depending upon special circumstances. In the neighborhood of many ports there are designated anchorage grounds, and a vessel anchored in these grounds designated by proper authority is not at fault on the mere score of anchorage. In other places vessels have grounds designated not by any special authority, but by general usage, and in that case, if the vessel anchors where it has been customary to anchor, and anchors in such a way that ample room is left for the passage of vessels, whether by day or night, allowing all necessary margin for the uncertainties of wind or current, it would not be negligent so to anchor. But, if a vessel anchors in a channel of navigation in such a way as to plant herself in the necessary path of passing vessels, so that moving vessels in such case come into collision with her, she is liable at least to be held partly in fault for the resulting collision; and, if it was a matter of nice calculation whether the moving vessel could pass or not, she would be held solely in fault.

In the Worthington,[35] a vessel anchored in the St. Clair river where it was customary to anchor, but left ample room for the passage of moving vessels. It was held that she was not to blame on the mere score of her anchorage, but that

780; Id., 100 Fed. 128, 40 C. C. A. 312; Europe (D. C.) 175 Fed. 596: Id., 190 Fed. 475, 111 C. C. A. 307.

[34] Sapphire, 11 Wall. 164, 20 L. Ed. 127; Clara, 102 U. S. 200, 26 L. Ed. 145; Oliver (D. C.) 22 Fed. 848; Clarita, 23 Wall. 1, 23 L. Ed. 146; Director (D. C.) 180 Fed. 606.

[35] (D. C.) 19 Fed. 836.

the situation imposed upon her increased vigilance in reference to keeping an anchor watch and proper light.

The cases of the Oscar Townsend[36] and the Ogemaw[37] were also cases of vessels anchored in the St. Clair river, in which the anchored vessel was held blameless.

On the other hand, in the Passaic,[38] a vessel at anchor in the St. Clair river was held at fault, not so much for anchoring there as for anchoring herself in such a manner that she could not move or sheer either way, the other boat also being held in fault for running into her.

In the S. Shaw,[39] a vessel anchored in the Delaware within the range of the lights, which was forbidden by the local statute. She was held at fault.

So, in La Bourgogne,[40] a steamer was held in fault for anchoring in New York harbor, in a fog, outside the prescribed anchorage grounds.

In Ross v. Merchants' & Miners' Transp. Co.,[41] certain barges were anchored in such a way as to obstruct the channel, and there was strong evidence also that they did not have up proper lights. The court decided that they were to blame for adopting such an anchorage.

This doctrine of obstructing narrow channels has the merit of great antiquity. Article 26 of the Laws of Wisbuy provides: "If a ship riding at anchor in a harbor, is struck by another ship which runs against her, driven by the wind or current, and the ship so struck receives damage, either in her hull or cargo; the two ships shall jointly stand to the loss. But if the ship that struck against the other might have avoided it, if it was done by the master on purpose, or by his fault, he alone shall make satisfaction. The reason is, that some masters who have old crazy ships, may willingly lie in other ships' way, that they may be damnify'd or sunk, and so have more than they were worth for them. On

[36] (D. C.) 17 Fed. 93.
[37] (D. C.) 32 Fed. 919.
[38] (D. C.) 76 Fed. 460.
[39] (D. C.) 6 Fed. 93.
[40] 86 Fed. 475, 30 C. C. A. 203.
[41] 104 Fed. 302, 43 C. C. A. 538.

which account this law provides, that the damage shall be divided, and paid equally by the two ships, to oblige both to take care, and keep clear of such accidents as much as they can."

These decisions were all rendered independent of statutory provision.

In the appropriation act of March 3, 1899, Congress made elaborate provisions for the protection of navigable channels, not only against throwing obstructions overboard, but against illegal anchorage. Sections 15 and 16 of that act [42] provided that it should not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, and imposed a penalty not only upon the navigator who put them there, but upon the vessel itself.

It was not the intent of Congress by this act to forbid vessels absolutely from anchoring in navigable channels. If their draught of water is so great that they can only navigate in a channel, it is so great that they can anchor nowhere else. At the same time, any great draught and the necessities of the occasion could not be used as an excuse to blockade the channel.

The meaning of the act is that vessels are thereby forbidden from completely obstructing the channel, or so obstructing it as to render navigation difficult. The language of the act is, "prevent or obstruct." Hence, if a vessel anchors in a navigable channel, where other vessels had been accustomed to anchor, and anchors in such a way as to leave a sufficient passageway for vessels navigating that channel, she can hardly be held to violate this statute. If she was put there by local authority—as by a local pilot or harbor master—that would be evidence in her favor to show that she was not guilty of negligence; but even that would not excuse her for completely obstructing the channel, or so far obstructing it as to render navigation around her diffi-

[42] 30 Stat. 1152, 1153 (U. S. Comp. St. §§ 9920, 9921); post, p. 489.

cult. Neither the vessel herself nor any local authority can be justified in blockading or rendering it unreasonably difficult.[43]

In the City of Reading,[44] a vessel was anchored outside the regular harbor grounds by a pilot—a fact unknown to her officers, as they were strangers in the port. District Judge McPherson held that the vessel was not negligent for such an anchorage under such circumstances. He does not allude to the act of Congress above referred to, although the accident happened on September 18, 1899, six months after the act went into effect.

SAME—WRECKS

142. The owner of a vessel sunk in collision is not liable for subsequent damages done by her if he abandons her, but is liable if he exercises any acts of ownership. In the latter case he is required to put a beacon on her at night, and a plain buoy in the day.

The reason why an owner who abandons a vessel is not liable for any further damage is that his misfortune is already great enough, and, if he feels that he cannot afford to save his vessel, the courts will not add to his responsibility. Under the federal statutes the government takes

[43] Itasca (D. C.) 117 Fed. 885; Northern Queen (D. C.) 117 Fed. 906; John H. Starin, 122 Fed. 236, 58 C. C. A. 600; Caldy (D. C.) 123 Fed. 802; Id., 153 Fed. 837, 83 C. C. A. 19; Newburgh, 130 Fed. 321, 64 C. C. A. 567; City of Birmingham, 138 Fed. 555, 71 C. C. A. 115; Job H. Jackson (D. C.) 144 Fed. 896; Ann J. Trainer, 152 Fed. 1021, 82 C. C. A. 332; Europe, 190 Fed. 475, 111 C. C. A. 307; Strathleven, 213 Fed. 975, 130 C. C. A. 381.

[44] (D. C.) 103 Fed. 696, affirmed City of Dundee, 108 Fed. 679, 47 C. C. A. 581, on another point. As to the effect of local usages or the acts of local officials, see, also, Severn (D. C.) 113 Fed. 578; Charles E. Matthews (D. C.) 132 Fed. 143; Juniata (D. C.) 124 Fed. 861; Merritt & Chapman Derrick & Wrecking Co. v. Cornell Steamboat Co., 185 Fed. 261, 107 C. C. A. 367.

charge of abandoned wrecks, and blows them up, or otherwise destroys them; or, if it does not care to do so, sells the wreck after a certain advertisement, and requires the purchaser to remove them as obstructions from the channel.[45]

The law on this subject of the duty of owners of sunken wrecks may be seen from the cases of the Utopia,[46] U. S. v. Hall,[47] and Ball v. Berwind.[48]

If the owner, instead of abandoning his wreck, decides to raise her, he is then responsible for any injury done by her from the failure to take proper precaution.

In fact, this is one case where there may be a liability even for the acts of an independent contractor. As a general rule, when an independent contractor is employed to undertake work which an employer can lawfully let out to contract, he alone, and not the owner, is responsible;[49] but, where the act required is a personal duty, then the owner may be responsible, even for the acts of an independent contractor. To obstruct a navigable channel without giving proper notice is an act unlawful in itself, just as the obstruction of a highway or street would be under similar circumstances; and therefore, when the owner of a vessel is having her raised by an independent contractor, and the contractor omits to put proper lights or buoys upon the wreck, the owner also is liable; and he is liable for any lack of due diligence in raising the wreck.[50]

§ 142. [45] Act March 3, 1899, §§ 19, 20, 30 Stat. 1154 (U. S. Comp. St. §§ 9924, 9925).

[46] [1893] A. C. 492.

[47] 63 Fed. 473, 11 C. C. A. 294.

[48] (D. C.) 29 Fed. 541.

[49] Ante, pp. 211, 213.

[50] Snark, [1899] P. 74; Id., [1900] P. 105; Drill Boat No. 4 (D. C.) 233 Fed. 589; Compare Weinman v. De Palma, 232 U. S. 571, 34 Sup. Ct. 370, 58 L. Ed. 733. But the owner, after having secured the services of the Lighthouse Department, is not liable for

THE STAND-BY ACT

143. This act requires colliding steamers to stay by each other regardless of the question of fault, on pain of being presumed negligent if they disregard this duty.

The act of September 4, 1890, provides as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and her port of registry, or the port or place to which she belongs, and also the name of the ports and places from which and to which she is bound. If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default.

"Sec. 2. That every master or person in charge of a United States vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of one thousand dollars, or imprisonment

its acts or omissions. Plymouth, 225 Fed. 483, 140 C. C. A. 1; McCaulley v. Philadelphia, 119 Fed. 580, 56 C. C. A. 100.

for a term not exceeding two years; and for the above sum the vessel shall be liable and may be seized and proceeded against by process in any District Court of the United States by any person; one-half such sum to be payable to the informer and the other half to the United States." [51]

This is a copy of the earlier English act on the same subject, and is intended to prevent a ship, even if faultless herself, from leaving the other to her fate, and also to give the information necessary as the basis of any proceeding for damages.

Presumptions against Violator of Act

The act merely raises a presumption in the absence of evidence to the contrary. Hence, if the case is tried on plenary proofs, the act does not do more than shift a nicely-balanced burden of proof. The master may be punished for his inhumanity under the second section, but his innocent owners cannot be mulcted in damages on that account if their vessel was guiltless of contributing to the collision. As Dr. Lushington says in the Queen of the Orwell: [52] "Now for the penalty, or what may be called the penalty: 'In case he fails so to do, and no reasonable excuse for said failure,' it shall be attended with certain consequences which are enumerated in the enactment. The effect of that, I think, is precisely what has been stated—that, supposing such a state of things to occur, there is thrown upon the party not rendering assistance the burden of proof that the collision was not occasioned by his wrongful act, neglect, or default. It does not go further. Assuming this case to come within the provisions of the statute, the proper question I shall have to put to you is that which I should put if no such statute at all existed: whether this collision was occasioned by the wrongful act, neglect, or default of the steamer."

§ 143. [51] 26 Stat. 425 (U. S. Comp. St. §§ 7979, 7980).
[52] 1 Mar. Law Cas. (O. S.) 300.

A leading American case on the subject is the HERCULES.[88]

[88] 80 Fed. 998, 26 C. C. A. 301. See, also, Trader (D. C.) 129 Fed. 462; Luzerne (D. C.) 148 Fed. 133; Id., 157 Fed. 391, 85 C. C. A. 328; Lizzie Crawford (D. C.) 170 Fed. 837. Pitgaveney, [1910] P. 215. In England this presumption of negligence has been repealed by the Maritime Conventions Act 1911, § 4 (2).

CHAPTER XIV

OF DAMAGES IN COLLISION CASES

RECOVERY BASED ON NEGLIGENCE

144. Negligence is an essential to recovery of damages in collision cases.

The mere happening of a collision does not give rise to a right of action for damages resulting therefrom, except in those cases where, under the navigation rules, one vessel is presumed to be in fault until she exonerates herself. Even in those cases the right of recovery is based, not upon the fact of collision, but upon the presumption of negligence.

A collision may happen under any one of several circumstances. It may arise without fault, it may arise by the fault of either one of the two, or it may arise by the fault of both. The law, as administered in the admiralty courts, is summarized by Lord Stowell in the WOODROP-SIMS.[1] In it he says:

§ 144. [1] 2 Dod. 83.

"In the first place, it [collision] may happen without blame being imputable to either party; as, where the loss is occasioned by a storm, or other vis major. In that case the misfortune must be borne by the party on whom it happens to light; the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame—where there has been want of due diligence or of skill on both sides. In such a case the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down; and in this case the innocent party would be entitled to an entire compensation from the other."

The question must be considered—First, as between the two ships; and, second, as respects third parties.

As between the owners of the two ships, it must be considered—First, where neither is in fault; second, where one alone is in fault: third, where both are in fault.

INEVITABLE ACCIDENT OR INSCRUTABLE FAULT

145. Where neither vessel is in fault, or where the fault is inscrutable, neither can recover, and the loss rests where it falls.

Meaning of "Inevitable Accident"

A collision arising by inevitable accident comes under this clause.

An "inevitable accident," in the sense in which it is used in this connection, does not mean an accident unavoidable under any circumstances, but one which the party accused cannot prevent by the exercise of ordinary care, caution,

and maritime skill. This definition is taken from the MARPESIA.[2]

In the GRACE GIRDLER,[3] the court says: "Inevitable accident is where a vessel is pursuing a lawful avocation in a lawful manner, using the proper precautions against danger, and an accident occurs. The highest degree of caution that can be used is not required. It is enough that it is reasonable under the circumstances; such as is usual in similar cases, and has been found by long experience to be sufficient to answer the end in view—the safety of life and property. Where there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen."

In the Mabey [4] the same idea is expressed thus: "Where the collision occurs exclusively from natural causes, and without any negligence or fault on the part of either party, the rule is that the loss must rest where it fell, as no one is responsible for an accident which was produced by causes over which human agency could exercise no control. Such a doctrine, however, can have no application to a case where negligence or fault is shown to have been committed on either side. Inevitable accident, as applied to a case of this description, must be understood to mean a collision which occurs when both parties have endeavored, by every means in their power, with due care and caution, and a proper display of nautical skill, to prevent the occurrence of the accident, and where the proofs show that it occurred in spite of everything that nautical skill, care, and precaution could do to keep the vessels from coming together."

The reason for this is that it is unfair to hold any one re-

§ 145. [2] L. R. 4 P. C. 212; Schwan, [1892] P. 419.

[3] 7 Wall. 196, 19 L. Ed. 113; Lackawanna, 210 Fed. 262, 127 C. C. A. 80.

[4] 14 Wall. 204, 20 L. Ed. 881; Coxe Bros. & Co. v. Cunard S. S. Co. (D. C.) 174 Fed. 166.

sponsible for a disaster produced by causes over which human skill and prudence can exercise no control.[5]

Under this class may be ranged those cases where accidents happen from the breakdown of machinery or other appliances.

In the William Lindsay,[6] a vessel was tied to a regular mooring buoy in the harbor. During a storm the buoy broke loose, and in trying to put out an anchor the cable on the windlass became jammed. The court held that it was an inevitable accident.

In the Olympia,[7] a collision was caused by the breaking of a tiller rope from a latent defect, the proof showing that it had been carefully inspected. The court held that it was an inevitable accident.

On the other hand, in the M. M. Caleb,[8] where a rudder chain broke from a defect which was discoverable by the exercise of reasonable care, the court held that it was negligence, and not an inevitable accident.

Collisions may occur from an inevitable accident, though nothing breaks, and there is no vis major. In the Java [9] a small schooner, which came from behind a large schoolship, was struck by a steamer coming from the other side, and it appeared that the steamer could not have seen the

[5] Sunnyside, 91 U. S. 208–210, 23 L. Ed. 302.

[6] L. R. 5 P. C. 338; E. M. Peck, 228 Fed. 481, 143 C. C. A. 63; Hispania, 242 Fed. 265, 155 C. C. A. 105. But jamming or breaking of steering gear, caused by too sudden a change in order to avoid a danger that should have been anticipated sooner, is not an inevitable accident. Brigham v. Luckenbach (D. C.) 140 Fed. 322; Edmund Moran, 180 Fed. 700, 104 C. C. A. 552.

[7] 61 Fed. 120, 9 C. C. A. 393; Virgo, 3 Asp. 285.

[8] 10 Blatchf. 467, Fed. Cas. No. 9,683; Acme (D. C.) 123 Fed. 814; J. N. Gilbert, 222 Fed. 37, 137 C. C. A. 575; Warkworth, 9 P. D. 20, 145; Merchant Prince, [1892] P. 179.

[9] 14 Wall. 189, 20 L. Ed. 834; Columbus, Fed. Cas. No. 3,043; Luzerne (D. C.) 148 Fed. 133; Id., 157 Fed. 391, 85 C. C. A. 328; Merritt & Chapman Derrick & Wrecking Co. v. Cornell Steamboat Co. (D. C.) 174 Fed. 716; Id., 185 Fed. 261, 107 C. C. A. 367.

sail vessel on account of the large ship. The court held that the accident was inevitable.

In the Transfer No. 3,[10] one boat was gradually overhauling another, and, when in a position where she could not stop in time to avoid collision, the machinery of the front boat broke down. The case was held one of inevitable accident.

The party defending on this ground has the burden of negativing any negligence on his part which might account for the accident.[11]

In cases of inscrutable fault, also, each party bears his own loss. Cases under this head are not common, as courts are loath to admit inability to locate fault.[12]

ONE SOLELY IN FAULT

146. Where one alone is in fault, that one alone is liable.

This is so obvious that further discussion seems unnecessary.

BOTH IN FAULT

147. Where both are in fault, the damages are equally divided, irrespective of the degree of fault.

This is the settled law in America, and until recently in England, and marks a sharp distinction between the common-law and admiralty courts. The distinction between the two forums is summarized in CAYZER v. CARRON Co.,[13] in which the court said:

[10] (D. C.) 91 Fed. 803.

[11] Edmund Moran, 180 Fed. 700, 104 C. C. A. 552; Bayonne, 213 Fed. 216, 129 C. C. A. 560; Merchant Prince, [1892] P. 179.

[12] Centurion, 100 Fed. 663, 40 C. C. A. 634; Jumna (D. C.) 140 Fed. 743; Id., 149 Fed. 171, 79 C. C. A. 119; Banner (D. C.) 225 Fed. 433.

§ 147. [13] 9 A. C. 873.

"Now, upon that I think there is no difference between the rules of law and the rules of admiralty to this extent: That, where any one transgresses a navigation rule, whether it is a statutory rule, or whether it is a rule that is imposed by common sense—what may be called the common law —and thereby an accident happens, of which that transgression is the cause, he is to blame, and those who are injured by the accident, if they themselves are not parties causing the accident, may recover both in law and in admiralty. If the accident is a purely inevitable accident, not occasioned by the fault of either party, then common law and admiralty equally say that the loss shall lie where it falls—each party shall bear his own loss. Where the cause of the accident is the fault of one party, and one party only, admiralty and common law both agree in saying that that one party who is to blame shall bear the whole damage of the other. When the cause of the accident is the fault of both each party being guilty of blame which causes the accident, there is a difference between the rule of admiralty and the rule of common law. The rule of common law says, as each occasioned the accident, neither shall recover at all, and it shall be just like an inevitable accident; the loss shall lie where it falls. Admiralty says, on the contrary, if both contributed to the loss, it shall be brought into hotchpotch, and divided between the two. Until the case of Hay v. Le Neve,[14] which has been referred to in the argument, there was a question in the admiralty court whether you were not to apportion it according to the degree in which they were to blame; but now it is, I think, quite settled, and there is no dispute about it, that the rule of the admiralty is that, if there is blame causing the accident on both sides, they are to divide the loss equally, just as the rule of law that, if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls."

[14] 2 Shaw, 395.

The doctrine was adopted in America in the CATHARINE,[15] and has been followed in numerous subsequent cases, in all of which the Supreme Court treats the law on the subject as settled.[16]

In arriving at the apportionment of damages when the injuries to the two vessels are unequal, the doctrine is not that the losses of each vessel are treated as separate causes of action asserted as cross causes, but that it is one cause of action only, and the vessel most injured is entitled to a decree for half the difference between her loss and the other.[17]

If the limited liability act protects the owners of one vessel from having to pay their moiety, the owners of the other vessel, if a third party has held them for more than their moiety, can recoup their loss, or plead it in set-off against the claim which the other vessel would otherwise have against them.[18]

In the Chattahoochee [19] the owner of the vessel lost libeled the other vessel for his own loss and as bailee of the cargo for its loss. Both vessels were held in fault. The vessel proceeded against was permitted to plead its liability to the shippers in reduction of its liability to the owner of the other vessel, though the shippers could not have held their own carrier in a direct proceeding on account of the Harter

[15] 17 How. 170, 15 L. Ed. 233.

[16] See, as illustrations, Maria Martin, 12 Wall. 31, 20 L. Ed. 251; NORTH STAR, 106 U. S. 17, 1 Sup. Ct. 41, 27 L. Ed. 91.

[17] Sapphire, 18 Wall. 51, 21 L. Ed. 814; Manitoba, 122 U. S. 97, 7 Sup. Ct. 1158, 30 L. Ed. 1095; Burke, Fed. Cas. No. 2,159; Khedive, 7 App. Cas. 795, 808; London S. S. Ass'n v. Grampian S. S. Co., 24 Q. B. D. 32, 663. Damages for which one of the two vessels has been held liable to a third are brought into the estimate. Frankland, [1901] P. 161.

[18] NORTH STAR, 106 U. S. 17, 1 Sup. Ct. 41, 27 L. Ed. 91.

[19] 173 U. S. 540, 19 Sup. Ct. 491, 43 L. Ed. 801; Albert Dumois, 177 U. S. 240, 20 Sup. Ct. 595, 44 L. Ed. 751; George W. Roby, 111 Fed. 601, 49 C. C. A. 481.

Act. In other words, a balance was struck between the two sets of damage and a decree given for half the difference.

Origin of the Half-Damage Rule

In examining the history of this half-damage rule, it is remarkable that the courts have adopted as a case for division of damages simply the case of mutual fault. This was not the origin of the rule. It may be traced at least as far back as the Laws of Oleron, article 14 of which provides:

"If a Vessel being moar'd lying at Anchor, be struck or grappled with another vessel under sail that is not very well steer'd, whereby the vessel at anchor is prejudic'd, as also wines, or other merchandize, in each of the said ships damnify'd. In this case the whole damage shall be in common, and be equally divided and appriz'd half by half; and the Master and Mariners of the vessel that struck or grappled with the other, shall be bound to swear on the Holy Evangelists, that they did it not willingly or willfully. The reason why this judgment was first given, being, that an old decay'd vessel might not purposely be put in the way of a better, which will the rather be prevented when they know that the damage must be divided."

Under this provision the damages were divided not only as among the vessels, but the cargoes, and that, too, whether negligent or not, unless it was intentional.

Article 26 of the Laws of Wisbuy apportions the loss as between the two ships, but only in cases of accident, not in case of fault. On the other hand, title 7, §§ 10, 11, of the Ordonnance of Louis XIV, provides:

"X. In case of ships running aboard each other, the damage shall be equally sustained by those that have suffered and done it, whether during the course, in a road, or in a harbour.

"XI. But if the damage be occasioned by either of the masters, it shall be repaired by him."

Thus it is clear that the application of the rule in modern times is much narrower than it was in its origin.

An examination of these old codes reveals another important fact in relation to it, and that is that it originated not in the law of torts, but in the law of average. It is under that head in the Ordonnance of Louis XIV, and the language of the others shows that it was treated as a contribution, and not as a liability on the ground of tort. The importance of this will appear in an early connection.

The doctrine of an equal division, no matter how the fault may compare, is so well settled by repeated decisions that it can hardly be considered open to question. There is one case in which the court refused to apply it. In the VICTORY,[20] which was a collision between two English ships in Norfolk harbor, the District Court decided the Victory alone at fault. An appeal was taken, and the case hotly contested in the Circuit Court of Appeals on the main question of fault, no question as to the apportionment of damage being raised either in the record or briefs. The Circuit Court of Appeals reversed the decision of the District Court on the facts, and held both at fault, but the fault of the Victory to be the more flagrant of the two; and it apportioned the loss by making the owners of the Victory pay the full value of their vessel, and the owners of the Plymothian merely pay the deficit sufficient to satisfy the cargo owners in full. A certiorari was applied for and obtained, and the case was argued in the Supreme Court, but that tribunal held the Victory alone at fault, and reversed the decision of the Circuit Court of Appeals, so that the judgment of the latter on that question can hardly be considered a precedent on the question of the proper method of apportioning the damage.

[20] (D. C.) 63 Fed. 631; Id., 68 Fed. 395, 15 C. C. A. 490; Id., 168 U. S. 419, 18 Sup. Ct. 149, 42 L. Ed. 519; C. R. Hoyt (D. C.) 136 Fed. 671.

The reason given by Dr. Lushington for an equal division, even where the fault is unequal,[21] is the impossibility of apportioning accurately under such circumstances, and the uncertainty which it would introduce into litigation. No two judges might agree as to the exact proportions to be made, and it would be impossible for counsel in any collision case to advise with any degree of accuracy.

A modification of the old rule that contributory negligence defeats recovery has been recently attempted in some of the common-law courts by the introduction of the doctrine of comparative negligence, which is intended to allow a jury to apportion the damages according to the degree of fault. The uncertainties arising from it, and the increase of litigation attendant upon all uncertainty, have prevented its general adoption; and, even as to the jurisdictions that have adopted it, the opinion of a distinguished text-writer is that it has caused more confusion than benefit.[22]

This question has received a great deal of discussion in the past few years as an academic question among maritime writers, but, so far as the decisions are concerned, it is so well settled that only statutory enactment could change it.[23]

It must, however, be admitted that there is a tendency in modern legislation to extend this doctrine of comparative negligence, as is shown by the statutes regulating the rights of employés of carriers. An old English writer once remarked that the measure of equity rights by the chancellor's conscience was about as certain as if it had been by the length of his foot. Whether the fancied attainment of a nearer measure of justice is worth the uncertainty in the application of such a rule by judges or juries remains to be seen.

[21] Milan, Lush. 388.

[22] 2 Wood, R. R. (Ed. 1894) p. 1506, § 322b.

[23] Atlas, 93 U. S. 302, 23 L. Ed. 863; Jacobsen v. Dalles P. & A. Nav. Co. (D. C.) 106 Fed. 428; Id., 114 Fed. 705, 52 C. C. A. 407.

In England the equal division rule in cases of unequal fault has been abolished by the Maritime Conventions Act, 1911, which apportions the loss according to the degree of fault.

Where more than two vessels are involved, the apportionment is made among all actually at fault.[24]

In America the costs are divided like the damages,[25] in England each side pays his own costs.[26]

RIGHTS OF THIRD PARTY WHERE BOTH IN FAULT

148. An innocent third party can recover against both vessels, but the form of his decree is not a general decree against both, but a decree for half against each with a remedy over against the other for any deficiency.

In England, in such cases, he can recover only half against each, and cannot make up his deficit against the other; and in case of a collision between two English ships on the high sea, an American court will apply the English rule.[27]

[24] Eugene F. Moran v. New York Cent. & H. R. R. Co., 212 U. S. 466, 29 Sup. Ct. 339, 53 L. Ed. 600; Maling (D. C.) 110 Fed. 227; S. A. McCaulley (D. C.) 116 Fed. 107 (reversed on facts in Pacific, 154 Fed. 943, 83 C. C. A. 515); Manhattan (D. C.) 181 Fed. 229 (reversed on facts 186 Fed. 329, 108 C. C. A. 407).

[25] America, 92 U. S. 432, 23 L. Ed. 724; Frank S. Hall (D. C.) 128 Fed. 816; Garden City (D. C.) 236 Fed. 302.

[26] Marpesia, L. R. 4 P. C. 212; City of Manchester, 5 P. D. 221; Rosalia, [1912] P. 109; Cardiff Hall, [1918] P. 56.

[27] Eagle Point, 142 Fed. 453, 73 C. C. A. 569; Ralli v. Societa Anonima Di Navigazione a Vapore G. L. Premuda (D. C.) 222 Fed. 994. For the English and American rules compared, and the effect of the Maritime Conventions Act, 1911, on the recovery, see Marsden on Collisions (7th Ed.) 148, 153.

The form of this decree shows that the doctrine did not find its origin in the law of torts, although many judges speak of the two vessels as joint tort-feasors. The Supreme Court has sedulously guarded the form of this decree, even correcting it in some instances where the question was not a material one, as the values were sufficient. This form of decree was announced in the Washington,[28] which was a case of a passenger on a ferryboat injured by the joint negligence of his boat and another vessel.

In the Alabama,[29] a vessel in tow was injured by the joint negligence of her tug and another vessel. The court gave the decree in the form above stated.

But this is a rule intended to do justice as between the wrongdoers, and will not be so applied as to deprive an innocent party of his right of full recovery. Hence, in the ATLAS,[30] a shipper on one of two vessels, both of which were in fault, proceeded against one vessel alone, and it was held that he was entitled to do so, and to recover his full damage from that vessel. The question is thoroughly discussed in the opinion delivered by Mr. Justice Clifford, who seems to treat it as much on the basis of an average contribution as upon the basis of a tort; that average contribution, however, to be applied simply as between the two in fault.[31]

[28] 9 Wall. 513, 19 L. Ed. 787.
[29] 92 U. S. 695, 23 L. Ed. 763.
[30] 93 U. S. 302, 23 L. Ed. 863.
[31] See, also, Sterling, 106 U. S. 647, 1 Sup. Ct. 89, 27 L. Ed. 98; New York, 175 U. S. 187, 20 Sup. Ct. 67, 44 L. Ed. 126.

CONTRIBUTION BETWEEN COLLIDING VESSELS —ENFORCEMENT IN SUIT AGAINST BOTH

149. Where both are negligent, and have been brought before the court by a joint libel against both, this contribution will be enforced.

Under the cases cited in a previous discussion, the form of the decree by which the third party is simply given a decree for half, with a contingent remedy over, is itself an enforcement of the right of contribution. At common law, in cases where no contribution existed as between wrongdoers, the decree was in solido against each, and, if the plaintiff levied his execution, and made his money out of one, that one could not compel the other to pay his part. These different forms of judgment or decree show the difference in the origin of the two doctrines at common law and in admiralty.

SAME—ENFORCEMENT BY BRINGING IN VESSEL NOT PARTY TO SUIT

150. Under the fifty-ninth admiralty rule, where the third party has proceeded against only one, that one can, by petition, obtain process to bring in the other vessel, if within reach of process.

This fifty-ninth rule in admiralty was promulgated on March 26, 1883.[82] It was the outgrowth of the decisions in reference to the form of decree, and was intended to prevent the injustice of leaving to the caprice of the libelant which of two colliding vessels he should hold. Just prior

§ 150. [82] 112 U. S. 743, 29 Sup. Ct. xlvi, post, p. 530.

to its promulgation the HUDSON [83] had been decided by District Judge Brown in the District Court for the Southern District of New York. In that decision Judge Brown sustained a motion to bring in as defendant one of the two vessels that was not before the court, and in doing so rendered an opinion as to the advantages of the procedure and the relative rights of the two colliding vessels in such cases. His learned discussion, both of the English and American authorities, treats the matter rather as a matter of contribution or average than a matter of joint tort. Hence, where vessels are in the jurisdiction, the fifty-ninth rule permits a proceeding against the vessel not sued, which practically makes an average adjustment, so to speak, of the loss among the parties liable. Hence the right of contribution is clear in two classes of cases: First, those in which both vessels are sued, and it can be brought about by the form of decree or by recoupment; and, second, those in which only one vessel is sued, and the other vessel is within reach of the court's process.

SAME—ENFORCEMENT BY INDEPENDENT SUIT

151. On the above principles, the right of contribution ought to exist between the two vessels by independent suit; and this right is settled by the later authorities.

The above discussion leaves open the case of suit against one vessel by the third party when the other vessel is not within the jurisdiction, and cannot be reached by process under the fifty-ninth rule. Suppose that in such a case the libelant gets a full decree against the vessel before the court, and compels payment, can that vessel institute an independent suit against the other vessel, and compel it to pay its portion?

[83] (D. C.) 15 Fed. 162.

There are decisions to the effect that such a remedy does not lie.

In the Argus,[84] in the District Court for the Eastern District of Pennsylvania, a dredge in tow of a tug collided with a steamer. The tug was operating the dredge under a contract between the owners by which the movements of the tug were controlled entirely by the tow. The owners of the dredge proceeded in New York against the steamer and tug for damages, but the tug was not served with process. and the dredge owners recovered their full damages from the steamer. Thereupon the steamer paid the damages, and libeled the tug in the District Court of Pennsylvania to compel her to pay her share. The District Court held that there was no direct remedy by the steamer against the tug; that, if she had any right at all, it must be by way of substitution to the lien which the libelant had asserted; and that in that special case the libelant was debarred from proceeding against the tug, as the management of the tug was solely in charge of his own officers. The opinion assumes, without discussion, that in the case of joint tort-feasors there is no recovery.

In the Mariska,[85] in the District Court for the Northern District of Illinois, it was held that admiralty rule 59 was not intended to give a subsequent proceeding of this sort, and that, independent of that rule, it was a case of joint tort-feasors, as to which there was no contribution.

This was reversed on appeal, but the ground of the opinion in the appellate court was given rather as a right derivative by subrogation than as an independent right of action.

Both these cases assume that if, at common law, a loss is caused by negligence, it is a case of joint tort, as to which there is no contribution.

§ 151. [84] (D. C.) 71 Fed. 891.

[85] (D. C.) 100 Fed. 500, reversed 107 Fed. 989, 47 C. C. A. 115.

Even at common law this assumption is erroneous. The rule that there is no contribution among joint tort-feasors, according to the better authority, in the common-law courts applies only in cases where there was some intentional or moral wrong committed. It presupposes an evil intent, and as to such cases it was certainly a wise rule. But the better authority is that this doctrine does not apply where the injury was unintentional, but arose merely from negligence, or the operation of some rule of law.[36]

The subject has been considered in England in Palmer v. Wick & P. Steam Shipping Co.[37] In it the question is discussed mainly with reference to the law of Scotland, but in some of the opinions the old English authorities in which the doctrine originated are reviewed and distinguished.

It is considered also by Judge Brown in the HUDSON, supra, who arrived at the same conclusion with reference to the common-law doctrine as that above announced. But the weight of English authority is against contribution.[38]

In Armstrong County v. Clarion County,[39] a traveler was injured by the defective condition of a bridge maintained jointly by two counties. He sued one county, and recovered. Thereupon this county sued the other, and the court sustained its right to contribution, holding that the common-law rule gave contribution where the act that was being done was not unlawful, and that contribution arises from natural principles, and not from contract.

In the Gulf Stream,[40] where certain shippers had sued both vessels in a collision, one of the vessels compromised

[36] Pol. Torts, 171; 12 Harvard Law Rev. 176 (1898); Law Quarterly Rev. (July, 1901) 293.

[37] [1894] A. C. 318.

[38] Frankland, [1901] P. 161, and cases cited.

[39] 66 Pa. 218, 5 Am. Rep. 368. On this subject of contribution at common law, see the note to the case of Kirkwood v. Miller, 5 Sneed. (Tenn.) 455, 73 Am. Dec. 147.

[40] (D. C.) 58 Fed. 604.

a good many of the claims at a considerable discount, and attempted to set off their full value against the other vessel in a settlement between them. The court held that the parties occupied in the admiralty towards each other somewhat the relation of cosureties, and that the other vessel was entitled to the benefit of these compromises. And in the NORTH STAR,[41] previously cited, the opinion reviews the old admiralty codes on the subject, and shows that the doctrine of division of loss in admiralty cases arose out of the principles of general average, as has been heretofore discussed.

If these last three cases are right, it follows that an action for contribution ought to lie by one vessel against the other. The fact that there is no privity between them is immaterial; for general average and contribution do not depend upon questions of privity or contract, but upon principles of natural justice. Indeed, the fact that they were not intentionally concurring in the act complained of is the reason why there should be a contribution, and why the common-law rule does not apply. Hence the reasoning of the Pennsylvania judge[42] that the right could only be claimed derivatively through the libelant is counter to the original principles on which the doctrine was based. It arose from a desire of the admiralty courts to adjust equitably the relations between the two vessels themselves, and not through any consideration of the rights of a third party against them, for his rights are unaffected by the doctrine. And the other reason given in the two cases above cited, holding the adverse doctrine that there is no contribution against tort-feasors, is counter to the preponderance of authority, even at common law, which is to the effect that, where the act was not intentional, there may be a contribution between tort-feasors.

On principle such a suit should lie in the admiralty. If

[41] 106 U. S. 17, 1 Sup. Ct. 41, 27 L. Ed. 91.

[42] In the Argus (D. C.) 71 Fed. 891, supra, p. 322.

the Supreme Court, by rule, can confer jurisdiction on an admiralty court to bring the other vessel in by petition, as is done by the fifty-ninth rule, that shows that the right is one of admiralty character, for a Supreme Court cannot, by rule, make a thing maritime which is not so by nature. It can only give a maritime remedy to a right maritime by nature. It has been seen in another connection that, where a salvor collects the entire salvage due, his cosalvors can sue him in admiralty to enforce an apportionment or contribution,[43] and this is a similar case. Admiralty has undoubted jurisdiction to compel contribution in cases of general average, and the doctrine now under discussion originated in the law of average.[44] Hence contribution may be enforced in an admiralty proceeding, probably in rem, and certainly in personam, as between the owners of two colliding ships where one had been compelled to pay more than his share. It is a necessary corollary from the doctrine that a decree is for half against each with a remedy over, thus making it a case where one is necessarily surety for the other in case of a deficit. The right has been definitely settled accordingly by two recent decisions of the Supreme Court.[45]

Both these cases were libels in personam, but no reason is perceived why the right could not be enforced by a pro-

[43] Ante, p. 151.

[44] Ante, p. 50.

[45] Erie R. Co. v. Erie & W. Transp. Co., 204 U. S. 220, 27 Sup. Ct. 246, 51 L. Ed. 450; Lehigh Valley R. Co. v. Cornell Steamboat Co., 218 U. S. 264, 31 Sup. Ct. 17, 54 L. Ed. 1039, 20 Ann. Cas. 1235. In both these cases the opinions merely say that this doctrine of contribution is of admiralty origin, without stating whether it arose from average or tort. They could not have treated it as a case of joint liability in tort; for it would have been inconsistent with Union Stockyards Co. v. Chicago, B. & Q. R. Co., 196 U. S. 217, 25 Sup. Ct. 226, 49 L. Ed. 453, 2 Ann. Cas. 525, in which the court adopted the rule of no contribution among negligent tort-feasors at common law. See, also, Eastern Dredging Co., In re (D. C.) 182 Fed. 179.

ceeding in rem. The liability to the party paying more than his share arises from a maritime tort of the other vessel or those responsible for her navigation. If such a remedy is available in rem under the fifty-ninth rule, it ought to lie in this analogous case.

MEASURE OF DAMAGES

152. The damages assessable in collision cases are those which are the natural and proximate result of the collision.

This subject must be considered—First, in reference to the cases where the loss is total; second, in reference to the cases where the loss is partial; third, what damages are proximate or remote.

SAME—WHEN LOSS TOTAL

153. If the loss is total, the amount recoverable by the vessel owner is the market value of the vessel at the time of the collision, if that is ascertainable, and her net freight for the voyage.[46]

Where a ship cannot be said to have a market value, the method of fixing her value is a question of fact, depending on the circumstances of the particular case. Her original cost, less proper deductions for depreciation, is evidence, though not conclusive or exclusive, of her value,[47]

The net freight allowed in cases of total loss is the net

§ 153. [46] BALTIMORE, 8 Wall. 377, 19 L. Ed. 463; Laura Lee (D. C.) 24 Fed. 483; Fabre v. Cunard S. S. Co., 53 Fed. 288, 3 C. C. A. 534; UMBRIA, 166 U. S. 404, 17 Sup. Ct. 610, 41 L. Ed 1053; Alaska S. S. Co. v. Inland Nav. Co., 211 Fed. 840, 128 C. C. A. 366; Philadelphia, [1917] P. 101.

[47] Lucille (D. C.) 169 Fed. 719; Samson, 217 Fed. 344, 133 C. C. A. 260; Harmonides [1903] P. 1.

freight for the voyage broken up. Profits on a future charter, not entered upon, are too remote.[48]

In the Kate,[49] the vessel was on her way to perform a charter party when she was lost. The court rather varied the general rule by permitting recovery of her value at the end of the voyage, and the profit under that charter party, as it had already been entered upon. On the other hand, in the Hamilton,[50] the value of the vessel at the beginning of the voyage was allowed, and interest from that date, but not the profits of the charter party which she then had, though she had entered upon it.

In case of a total loss of cargo, the value recoverable is the value at place of shipment, with all expenses added; but, if the loss is only partial, the net values saved must be credited.[51]

The fact that a vessel is sunk does not necessarily make the loss a total one. The owner must make some effort to find out whether she can be saved or not, but, if he shows an unsuccessful effort to induce salvors to raise her, it shifts to the respondent the burden to show that the loss was not total.[52]

[48] UMBRIA, 166 U. S. 404, 17 Sup. Ct. 610, 41 L. Ed. 1053; Kate, [1899] P. 165; George W. Roby, 111 Fed. 601, 49 C. C. A. 481; Menominee (D. C.) 125 Fed. 530.

[49] [1899] P. 165. See, also, Racine, [1906] P. 273.

[50] (D. C.) 95 Fed. 844.

[51] Scotland, 105 U. S. 24, 26 L. Ed. 1001; George Bell (D. C.) 3 Fed. 581, 5 Hughes, 172; Umbria, 59 Fed. 480, 8 C. C. A. 194.

[52] Normandie (D. C.) 40 Fed. 590; Id. (D. C.) 43 Fed. 151; Ernest A. Hamill (D. C.) 100 Fed. 509; Des Moines, 154 U. S. 584, 14 Sup. Ct. 1168, 20 L. Ed. 821.

SAME—WHEN LOSS PARTIAL

154. In case of a partial loss, the amount recoverable is the cost of saving the vessel, the repair and expense bills caused by the collision, and a reasonable allowance for the loss of the use of the vessel during any delay caused by the collision.

There is usually but little difficulty in settling the items for actual repairs. The fight generally turns on the amount that should be allowed for the loss of the vessel's use, or demurrage, as it is frequently, though inaccurately, called.

The sum to be allowed is the actual loss caused to the owner by being deprived of his vessel. This is a question of fact, and is often difficult of ascertainment.

The demurrage rate specified in a bill of lading or charter party is not the measure of damages, though it may be competent evidence.[53]

If the vessel is actually under charter, the amount payable per day is strong evidence of her value.[54]

When, however, the vessel is being operated by her owner, the method of fixing the rate varies greatly.

In the Potomac[55] a vessel engaged in a particular business was allowed the daily average of her net profits for the season.

In such cases the rate differs from that in case of total loss, for under partial loss cases the future profits on a charter may be allowed.[56]

Where no charter rate can be fixed, the courts hold that

§ 154. [53] Hermann, 4 Blatchf. 441, Fed. Cas. No. 6,408.

[54] Margaret J. Sanford (C. C.) 37 Fed. 148; Brand, 224 Fed. 391, 140 C. C. A. 77, Ann. Cas. 1917B, 996.

[55] 105 U. S. 630, 26 L. Ed. 1194; Europe, 190 Fed. 475, 111 C. C. A. 307.

[56] Argentino, 14 A. C. 519; UMBRIA, 166 U. S. 421, 17 Sup. Ct. 610, 41 L. Ed. 1053.

one good way of fixing the damage is to take the vessel's average earnings about the time of the collision.[57]

A company which keeps a spare boat can still recover for the loss of use of their steamer, though the spare boat took its place.[58]

As these damages are allowed simply to make up to the owner any pecuniary loss to which he may be put by being deprived of the use of his vessel, it follows that no allowance for loss of time can be recovered in case of a vessel not operated for profit, but pleasure—like a private yacht—or of vessels not in operation.[59]

On the other hand, in the Greta Holme,[60] the trustees of a municipality which kept a steam dredge for their sole use were allowed to recover for the time lost by it in consequence of a collision damage, though they could not prove any direct pecuniary loss. They did prove, however, that the filling up during the dredge's absence from work entailed additional dredging afterwards.

Interest on the value from the date of collision in case of

[57] CONQUEROR, 166 U. S. 110, 17 Sup. Ct. 510, 41 L. Ed. 937; William H. Bailey (D. C.) 103 Fed. 799; Bulgaria (D. C.) 83 Fed. 312; Tremont, 161 Fed. 1, 88 C. C. A. 304; Orion, 239 Fed. 301, 152 C. C. A. 289.

[58] Cayuga, 14 Wall. 270, 20 L. Ed. 828; Mediana, [1899] P. 127; Id., [1900] A. C. 113.

[59] CONQUEROR, 166 U. S. 110, 17 Sup. Ct. 510, 41 L. Ed. 937; Saginaw (D. C.) 95 Fed. 703; Wm. M. Hoag (D. C.) 101 Fed. 846; Fisk v. New York (D. C.) 119 Fed. 256; Loch Trool (D. C.) 150 Fed. 429. In Vanadis (D. C.) 250 Fed. 1010, demurrage was allowed for a yacht used only for pleasure; the court attempting (not very successfully) to distinguish it from the Conqueror Case.

[60] [1897] A. C. 596. The tendency of the more recent English decisions has been to allow demurrage for loss of use of government ships, though no actual pecuniary loss is directly proved. Marpessa, [1907] A. C. 241; Astrakhan, [1910] P. 172. Under the American decisions the government can recover crew's wages and keep and other actual expenses, but not demurrage. A. A. Raven, 231 Fed. 380, 145 C. C. A. 374.

total loss, and on each item in case of partial loss, is usually allowed, though its allowance is a matter of judicial discretion.[61]

In estimating the cost of repairs, the fact that new repairs make the vessel more valuable than she was before, if these new repairs were necessary to restore her, does not cause any deduction. The rule of one-third off new for old, which has been adopted by the insurance companies, does not apply in collision cases.[62]

It is often a difficult question of fact how far the recovery may extend when the vessel is old, and it is necessary to put in a good deal of work on each side of the natural wound in order to make the repairs hold. As a rule, the cost of repairing adjacent parts is not recoverable, provided those adjacent parts were not in good condition. If the vessel is in good condition, and the injury is such that repairs to adjacent parts are also needed, they would be recoverable.[63]

REMOTENESS OF DAMAGES—SUBSEQUENT STORM

155. If a vessel partially injured is so crippled by a collision as to be lost in a subsequent storm, which she could otherwise have weathered, that is, in law, considered as proximately arising from the collision.

[61] Albert Dumois, 177 U. S. 240, 20 Sup. Ct. 595, 44 L. Ed. 751. The trend of later decisions is to a liberal policy in its allowance. Rickmers, 142 Fed. 305, 73 C. C. A. 415; J. G. Gilchrist (D. C.) 173 Fed. 666; Id., 183 Fed. 105, 105 C. C. A. 397; Mary B. Curtis, 250 Fed. 9, 162 C. C. A. 181; Great Lakes Dredge & Dock Co., In re (D. C.) 250 Fed. 916.

[62] BALTIMORE, 8 Wall. 377, 19 L. Ed. 463.

[63] John R. Penrose (D. C.) 86 Fed. 696; Providence, 98 Fed. 133, 38 C. C. A. 670.

The damages recoverable, as in common-law cases, are only those proximately caused by the collision. This is often a difficult question, and the decisions are not always enlightening. For instance, in the common-law case of Memphis & C. R. Co. v. Reeves,[64] tobacco which did not go forward as fast as it might have done was caught in a flood, which it would otherwise have escaped. The court held that the proximate cause was the flood.

In the Leland,[65] a vessel injured in collision while making her way to port was caught in a storm, and, in consequence of her crippled condition, was totally wrecked. It was contended that the proximate cause of her main damage was the storm, but the court held that it was the collision, and that the vessel at fault was liable for the entire loss.

In the City of Lincoln,[66] the compass, charts, log, and log glass of a bark were lost in a collision. On making her way to port, she grounded on account of the lack of these requisites to navigation. The court held that the additional damage received in grounding was due proximately to the collision, and recoverable.[67]

SAME—DOCTRINE OF ERROR IN EXTREMIS

156. If a vessel, by her negligence, places the other in a perilous situation, and the latter, in the excitement, takes the wrong course, the negligence of the first is considered the proximate cause.

This is the "doctrine of error in extremis," and applies, as is well known, to all cases of negligence. The reason is

§ 155. [64] 10 Wall. 176, 19 L. Ed. 909.

[65] (D. C.) 19 Fed. 771.

[66] 15 P. D. 15.

[67] See, also, Boutin v. Rudd, 82 Fed. 685, 27 C. C. A. 526; Onoko (D. C.) 100 Fed. 477; Id., 107 Fed. 984, 47 C. C. A. 111; Mellona, 3 W. Rob. 7; Pensher, Swa. 211; Reischer v. Borwick, [1894] 2 Q. B. 548; Bruxelleville, [1908] P. 312; ante, § 35, p. 80.

that it is not right to expect superhuman presence of mind, and therefore, if one vessel has, by wrong maneuvers, placed another ship in a position of extreme danger, that other ship will not be held to blame if she has done something wrong, and has not been maneuvered with perfect skill and presence of mind.[68]

This doctrine has been enunciated in many American cases. Illustrations may be found in the cases which hold that a steamer must not run so close to a sailing vessel as to cause her alarm and trepidation.[69]

It applies just as well, however, to steamers.[70]

But the vessel which appeals to this doctrine must show that she was not in fault herself. She cannot claim to be free from negligence at the last moment on account of excitement, if her previous maneuvers have brought about the critical situation.[71]

§ 156. [68] Bywell Castle, 4 P. D. 219; NICHOLS, 7 Wall. 656, 19 L. Ed. 157; Maggie J. Smith, 123 U. S. 349, 8 Sup. Ct. 159, 31 L. Ed. 175; Charles Hubbard, 229 Fed. 352, 143 C. C. A. 472.

[69] Carroll, 8 Wall. 302, 19 L. Ed. 392; LUCILLE, 15 Wall. 676, 21 L. Ed. 247; Nacoochee, 137 U. S. 330, 11 Sup. Ct. 122, 34 L. Ed. 687; ante, p. 280.

[70] Blue Jacket, 144 U. S. 371, 12 Sup. Ct. 711, 36 L. Ed. 469.

[71] ELIZABETH JONES, 112 U. S. 514, 5 Sup. Ct. 468, 28 L. Ed. 812; Protector, 113 Fed. 868, 51 C. C. A. 492; Noreuga (D. C.) 211 Fed. 356; Manchioneal, 243 Fed. 801, 156 C. C. A. 313.

CHAPTER XV

OF VESSEL OWNERSHIP INDEPENDENT OF THE LIMITED LIABILITY ACT

METHOD BY WHICH TITLE TO VESSELS MAY BE ACQUIRED OR TRANSFERRED

157. Title to vessels may be acquired by construction or by purchase.

A bill of sale is necessary before the vessel can be documented or enjoy the privileges of an American vessel, but not for the transfer of title.

A prospective vessel owner may build his own vessel, whether individually or by contract, or he may purchase it from some one else.

The question when title passes in case of a ship under construction is one of intent under the contract of construction. The fact that the contract price is payable in installments is not necessarily an indication of an intent that title shall pass pro tanto.[1]

A vessel is a mere piece of personal property, and sale, accompanied by delivery, will pass the title. Such a sale may be proved by parol, as in any other case of personalty.[2]

§ 157. [1] U. S. v. Ansonia Brass & Copper Co., 218 U. S. 452, 31 Sup. Ct. 49, 54 L. Ed. 1107; Poconoket (D. C.) 67 Fed. 262; Id., 70 Fed. 640, 17 C. C. A. 309; Id., 168 U. S. 707, 18 Sup. Ct. 939, 42 L. Ed. 1214. In England the presumption is the other way. Seath v. Moore, 11 A. C. 350, 380.

[2] Badger v. President, etc., of Bank of Cumberland, 26 Me. 428; Chadbourne v. Duncan, 36 Me. 89.

Section 4170 of the Revised Statutes of the United States provides:

"Whenever any vessel, which has been registered, is, in whole or in part, sold or transferred to a citizen of the United States, or is altered in form or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting, the vessel shall be registered anew, by her former name, according to the directions hereinbefore contained, otherwise she shall cease to be deemed a vessel of the United States. The former certificate of registry of such vessel shall be delivered up to the collector to whom application for such new registry is made, at the time that the same is made, to be by him transmitted to the register of the treasury, who shall cause the same to be canceled. In every such case of sale or transfer, there shall be some instrument of writing, in the nature of a bill of sale, which shall recite, at length, the certificate; otherwise the vessel shall be incapable of being so registered anew." [3]

The only effect of not having the required bill of sale, or of having a bill of sale without the certificate set out in it, is to cause the vessel to forfeit its rights to American papers.[4]

In order to make this title binding as against third parties, it must be recorded in the custom house. Section 4192 of the United States Revised Statutes provides:

"No bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part of any vessel, of the United States, shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such bill of sale, mortgage, hy-

[3] U. S. Comp. St. § 7751.

[4] Amelie, 6 Wall. 18, 18 L. Ed. 806; De Wolf v. Harris, 4 Mason, 515, Fed. Cas. No. 4,221; Orlando v. Wooten (D. C.) 214 Fed. 271. A bill of sale need not be under seal. Hunter v. Parker, 7 M. & W. 322. 331.

pothecation, or conveyance is recorded in the office of the collector of the customs where such vessel is registered or enrolled. The lien by bottomry on any vessel, created during her voyage, by a loan of money or materials necessary to repair or enable her to prosecute her voyage, shall not, however, lose its priority, or be in any way affected by the provisions of this section." [5]

If it is recorded according to this section, it is binding as to third parties, though not indexed.[6]

This statute has been held constitutional by the United States Supreme Court.[7]

The place where the vessel is registered or enrolled is regulated by section 4141 of the Revised Statutes, which says:

"Every vessel, except as is hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be that at or nearest to which the owner, if there be but one, or, if more than one, the husband or acting and managing owner of such vessel, usually resides." [8]

These statutes, above quoted, which in terms apply to registered vessels, are made to apply to enrolled vessels by section 4312 of the Revised Statutes, which says:

"In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requirements in all respects shall be complied with, as are required before registering a vessel; and the same powers and duties are conferred and imposed upon all officers respectively, and the same proceedings shall be had, in enrollment of vessels, as are prescribed for similar cases in registering; and vessels enrolled, with the masters or owners thereof, shall be

[5] U. S. Comp. St. § 7778.

[6] W. B. Cole (C. C.) 49 Fed. 587; Id., 59 Fed. 182, 8 C. C. A. 78.

[7] WHITE'S BANK v. SMITH, 7 Wall. 646, 19 L. Ed. 211.

[8] U. S. Comp. St. § 7719.

subject to the same requirements as are prescribed for registered vessels." [9]

These bills of sale are required not only to be recorded, but they must set out exactly the interest of each person selling and each person purchasing.[10]

A vessel engaged in foreign trade is said to be registered, one engaged in the coasting or internal trade on navigable waters of the United States is said to be enrolled, and one of the latter class under twenty tons is said to be licensed.[11]

RELATION OF VESSEL OWNERS INTER SESE

158. Part owners of a vessel, in the absence of special agreement, are tenants in common, not partners.

The presumption is in favor of a tenancy in common and against a partnership, though the latter may exist by special agreement. This has been settled law, both in England and America, for a long time.[12]

The fact that a vessel is run on shares does not constitute the part owners a partnership.[13]

Part owners have no lien as against each other in case one pays more than his share of the expenses or debts,

[9] U. S. Comp. St. § 8058.

[10] Rev. St. §§ 4192–4196 (U. S. Comp. St. §§ 7778–7782).

[11] Mohawk, 3 Wall. 566, 18 L. Ed. 67; Montello, 11 Wall. 411, 20 L. Ed. 191. The vessels entitled to American papers are set out in section 4132 of the Revised Statutes (as last amended, in U. S. Comp. St. § 7709). The form of register is given in section 4155 of the Revised Statutes (U. S. Comp. St. § 7736); the form of enrolment in section 4319 of the Revised Statutes (U. S. Comp. St. § 8065); and the form of license in section 4321 of the Revised Statutes (U. S. Comp. St. § 8069).

§ 158. [12] Bradshaw v. Sylph, Fed. Cas. No. 1,791; Revens v. Lewis, 2 Paine, 202, Fed. Cas. No. 11,711; SPEDDEN v. KOENIG, 78 Fed. 504, 24 C. C. A. 189; Briggs & Cobb v. Barnett, 108 Va. 404, 61 S. E. 797.

[13] Daniel Kaine (D. C.) 35 Fed. 785.

though the one so paying may be the ship's husband. This question was long a subject of debate in the courts, but the above may be considered as the settled doctrine now.[14]

In such case, however, when he has made necessary advances for the common benefit, under express or implied authority to do so, he may compel contribution from the owners for such advances; but this is a mere matter of accounts, and there is no jurisdiction in admiralty to maintain such a suit.[15]

The complete separation of vessel and owner in admiralty is forcibly illustrated by the decisions that a part owner, who happens to be engaged in the business of furnishing repairs or supplies to vessels, may libel his vessel for such repairs and supplies so furnished, and may assert a lien against his other part owners or their assignee, but not to the detriment of creditors of the vessel itself. This doctrine must be carefully distinguished from the doctrine announced in the last paragraph. For a mere balance of accounts there is no right of action in admiralty, but, if a part owner of a vessel happens to keep a machine shop, and does work upon the vessel on the credit of the vessel, there is no reason why he should not be allowed to libel the vessel, and to assert such a maritime cause of action against his other part owners. But, when the vessel comes to be sold, if there are other creditors, it would be inequitable to allow the part owner, who himself may be personally bound, to assert a lien against his own creditors; and therefore the doctrine is limited to an assertion of it in subordination to the claims of the other creditors on the boat.[16]

[14] LARCH, 2 Curt. 427, Fed. Cas. No. 8,085; Daniel Kaine (D. C.) 35 Fed. 785.

[15] LARCH, 2 Curt. 427, Fed. Cas. No. 8,085; Orleans, 11 Pet. 175, 9 L. Ed. 677.

[16] PETTIT v. CHARLES HEMJE, 5 Hughes, 359, Fed. Cas. No. 11,047a; West Friesland, Swa. 454; Learned v. Brown, 94 Fed. 876,

The decisions on this question, however, are not harmonious; some courts confusing it with the doctrine that there is no jurisdiction in the admiralty as to accounts among part owners.

But there are many cases where this question could not possibly be involved, like a personal injury claim, a claim for loss of goods shipped, or arising out of a collision. There can be no sound reason why a part owner should not be permitted to proceed against the vessel in such cases, always in subordination to other debts for which he is also responsible.[17]

There is nothing in the relation of part owners which makes one an agent for the other any more than there is in the relation of tenants in common. Hence one part owner, in the absence of some authority, express or implied, cannot bind the other part owner for the debts of the vessel. If cases exist in which the other part owner has been held bound, it will be found that there was some course of dealing or other circumstance tending to show express or implied authority.[18]

Disputes often arise between part owners as to the method of using their vessel. If they cannot agree, the majority owner can take the vessel, and use her, and in such case he will be entitled to the profits of the voyage, but the part owner may require him to give security for the protection of his interest in the vessel against loss, and admiralty has jurisdiction of a libel to compel the giving of such security.[19]

36 C. C. A. 524; Fredericka Schepp (D. C.) 195 Fed. 623; Puritan (D. C.) 258 Fed. 271.

[17] See the discussion of this subject by the author in his article on Maritime Liens, 26 Cyc. 757, note 62.

[18] Brodie v. Howard, 17 C. B. (84 E. C. L.) 109; FRAZER v. CUTHBERTSON, 6 Q. B. D. 93.

[19] Coyne v. Caples (D. C.) 8 Fed. 638; Tunno v. Betsina, Fed. Cas. No. 14,236; Scull v. Raymond (D. C.) 18 Fed. 547; post, p. 516.

In such case a minority owner who is protected by such a bond, and who has refused to join in the voyage, cannot claim a share in its profits, as he has had none of the risk.[20]

In cases of disagreement the majority owner has the right to the use of the vessel, subject to the right of the minority to require bond; but, if the majority will not use the vessel at all, then the minority can use her on giving a similar bond to the majority. The reason of this is the principle of public policy that vessels should be used, and, while the majority in case of difference as to the precise voyage or the precise method of use can control, they cannot control it so far as to require the vessel to be laid up.[21]

Although admiralty does not have jurisdiction to decree a sale of a vessel for purpose of partition where the interests in the vessel are unequal—for in that case the majority can rule—yet, if the interests are equal, and the equal interests disagree as to the method of employment of the vessel, then in that case neither can compel the other to give way, and admiralty has jurisdiction to decree a sale of the vessel.[22]

In England there was no jurisdiction in admiralty to sell for partition until the Act of 24 Vict. c. 10. The eighth section of that act gives such jurisdiction, whether as between equal or unequal interests, and also of all matters of account between part owners.[23]

[20] Marengo, 1 Low. 52, Fed. Cas. No. 9,065; Head v. Amoskeag Mfg. Co., 113 U. S. 9, 5 Sup. Ct. 447, 28 L. Ed. 889.

[21] Tunno v. Betsina, Fed. Cas. No. 14,236; Orleans, 11 Pet. 175, 9 L. Ed. 677; Gould v. Stanton, 16 Conn. 12; Southworth v. Smith, 27 Conn. 355, 71 Am. Dec. 72; England, 12 P. D. 32.

[22] Ocean Belle, 6 Ben. 253, Fed. Cas. No. 10,402; Tunno v. Betsina, Fed. Cas. No. 14,236; Coyne v. Caples (D. C.) 8 Fed. 638; Head v. Amoskeag Mfg. Co., 113 U. S. 9, 23, 5 Sup. Ct. 447, 28 L. Ed. 889. In such case the court may take necessary incidental accounts. Emma B. (D. C.) 140 Fed. 771.

[23] Apollo, 1 Hagg. Ad. 306. Smith's Admiralty Law & Practice (Ed. 1892) 46 et seq.

On the principle that the majority rules, a majority may remove the master of the vessel at any time, even without cause, and though he is part owner; but, if they remove him prior to the time for which they had agreed to keep him, or in any way break their contract with him, they are liable to an action for damages. Their power of removal, however, is clear, except when there is a written agreement to the contrary. On this subject section 4250 of the Revised Statutes says:

"Any person or body corporate having more than one-half ownership of any vessel shall have the same power to remove a master, who is also part owner of such vessel, as such majority owners have to remove a master not an owner. This section shall not apply where there is a valid written agreement subsisting, by virtue of which such master would be entitled to possession, nor in any case where a master has possession as part owner, obtained before the ninth day of April, eighteen hundred and seventy-two." [24]

In disputes with vessel owners admiralty takes cognizance only of legal titles, not of equitable.[25]

The admiralty procedure to obtain possession of a ship is a petitory or possessory libel.[26]

[24] Lizzie Merry, 10 Ben. 140, Fed. Cas. No. 8,423; Montgomery v. Wharton, Fed. Cas. No. 9,737; Same v. Henry, 1 Dall. 49, 1 L. Ed. 32, 1 Am. Dec. 223; Eliza B. Emory (C. C.) 4 Fed. 342; Lombard S. S. Co. v. Anderson, 134 Fed. 568, 67 C. C. A. 432. Section 4250 of the Revised Statutes is contained in U. S. Comp. St. § 7995.

[25] Eclipse, 135 U. S. 599, 10 Sup. Ct. 873, 34 L. Ed. 269; Robert R. Kirkland (D. C.) 92 Fed. 407; United Transportation & Lighterage Co. v. New York & Baltimore Transp. Line (D. C.) 185 Fed. 386, 107 C. C. A. 442.

[26] Nellie T., 235 Fed. 117, 148 C. C. A. 611.

RELATION OF VESSEL OWNERS AS RESPECTS THIRD PARTIES

159. Vessel owners are liable in solido for the debts or torts of the vessel incurred in the natural course of business by parties holding the relation of agent to such vessel owners.

This is a long-settled principle of English and American law.[27]

The parties who are usually the agents of the vessel are the master and the managing owner. These are frequently combined in the same person, and their powers are substantially the same. They may bind the owners for debts in the usual and natural employment of the vessel.

A clear statement of the powers of the ship's managing owner (which is practically another term for the ship's husband) is set out in volume 1, § 428, of Bell's Commentaries, which enumerates them as follows, and also the limitation on his powers:

(1) To see to the proper outfit of the vessel, in the repairs adequate to the voyage, and in the tackle and furniture necessary for a seaworthy ship. (2) To have a proper master, mate, and crew for the ship, so that in this respect it shall be seaworthy. (3) To see to the due furnishing of provisions and stores, according to the necessities of the voyage. (4) To see to the regularity of all the clearances from the custom house, and the regularity of the registry. (5) To settle the contracts, and provide for the payment of the furnishings which are requisite in the performance of those duties. (6) To enter into proper charter parties, or engage the vessel for general freight, under the usual con-

§ 159. [27] Thompson v. Finden, 4 Car. & P. 158, 19 E. C. L. 320; Nestor, 1 Sumn. 73, Fed. Cas. No. 10,126; Gallatin v. Pilot, 2 Wall. Jr. 592, Fed. Cas. No. 5,199.

ditions; and to settle for freight and adjust average with the merchant. (7) To preserve the proper certificates, surveys, and documents, in case of future disputes with insurers or freighters, and to keep regular books of the ship."

In a well-considered American case his powers are enumerated as follows:

"To provide for the complete seaworthiness of the ship; to see that she has on board all necessary and proper papers; to make contracts for freight; to collect the freight and enter into proper charter parties; to direct the repairs, appoint the officers and mariners; to see that the vessel is furnished with provisions and stores; and generally to conduct all the affairs and arrangements for the due employment of the ship in commerce and navigation." [28]

Mr. Bell in treating of the limitations of the powers of a ship's husband, says:

"(1) That, without special powers, he cannot borrow money generally for the use of the ship, though he may settle the accounts of the creditors for furnishings, or grant bills for them, which will form debts against the concern, whether he has funds in his hands or not, with which he might have paid them. (2) That, although he may, in the general case, levy the freight, which is, by the bill of lading, payable on the delivery of the goods, it would seem that he will not have power to take bills for the freight, and give up the possession and lien over the cargo, unless it has been so settled by charter party, or unless he has special authority to give such indulgence. (3) That, under general authority as ship's husband, he has no power to insure, or to bind the owners for premiums; this requiring a special authority. (4) That, as the power of the master to enter into contracts of affreightment is superseded in the port of the

[28] Chase v. McLean, 130 N. Y. 529, 29 N. E. 986. As to his powers as agent, see, also, Great Lakes Towing Co. v. Mills Transp. Co., 155 Fed. 11, 83 C. C. A. 607, 22 L. R. A. (N. S.) 769; Benjamin Noble, 244 Fed. 95, 156 C. C. A. 523.

owners, so is it by the presence of the ship's husband, or the knowledge of the contracting parties that a ship's husband has been appointed."

Accordingly, it has been held that his powers do not extend so far as to permit him to bind the owners for the cargo purchased for the vessel, that not being considered as a necessity in the course of business.[29]

The managing owner cannot bind the others in the home port unless express authority be shown, for the basis of his power is the necessity of the vessel, and in the home port the owners can easily be consulted.[30]

Nor can he bind minority owners who have dissented from the use of the vessel for that particular voyage, for, as they cannot, in such case, share in the profits, it would be inequitable to expect them to bear the costs.[31]

The supplies for which part owners may be bound by their agents are simply those things included in the term "necessaries." In another connection the question as to what constitutes "necessaries" which a captain may order for his vessel has been discussed, and the same test applies here. Reference is made to that discussion.[32]

The owners are liable not only for contract debts, but also for the torts of the master in the line of his duty, not for those outside the line of his duty. For instance, in The Waldo [33] the owners were held liable for injury to goods

[29] Ole Oleson (C. C.) 20 Fed. 384.

[30] SPEDDEN v. KOENIG, 78 Fed. 504, 24 C. C. A. 189; Woodall v. Dempsey (D. C.) 100 Fed. 653; Besse v. Hecht (D. C.) 85 Fed. 677; Helme v. Smith, 7 Bing. 709, 20 E. C. L. 300; Briggs & Cobb v. Barnett, 108 Va. 404, 61 S. E. 797. This power to bind the owners personally in the home port must not be confused with his power to bind the ship under Act June 23, 1910; ante, chapter iv.

[31] FRAZER v. CUTHBERTSON, 6 Q. B. D. 93; Vindobala, 13 P. D. 42; Id., 14 P. D. 50; Scull v. Raymond (D. C.) 18 Fed. 547; Stedman v. Feidler, 20 N. Y. 437.

[32] Ante, p. 107.

[33] Waldo, 2 Ware, 165, Fed. Cas. No. 17,056. See, also, Taylor

on a vessel while in transit, but not for damages received by their sale and disposition after they had been taken from the vessel; the master, as to these latter transactions, being considered the agent of the shippers, and not of the vessel owners.

The fact that a person appears on the papers of the vessel as owner does not make him liable. As seen above, he is not liable if he has expressly dissented from the voyage. In addition, if the bill of sale or title which he holds is a mere security, as a mortgage in disguise, and he has not the possession of the vessel, he is not liable. The question reduces itself to one of agency. In such case, as he has not possession, he has not the power of appointment or control, and the parties operating the vessel are not his agents. Even if the vessel is run on shares by the master, that does not constitute him their agent.[84]

v. Brigham, 3 Woods, 377, Fed. Cas. No. 13,781; ante, p. 215.

[84] Myers v. Willis, 17 C. B. (84 E. C. L.) 77; Webb v. Peirce, 1 Curt. 104, Fed. Cas. No. 17,320; Davidson v. Baldwin, 79 Fed. 95, 24 C. C. A. 453; Morgan v. Shinn, 15 Wall. 105, 21 L. Ed. 87.

CHAPTER XVI

OF THE RIGHTS AND LIABILITIES OF OWNERS AS AFFECTED BY THE LIMITED LIABILITY ACT

HISTORY OF LIMITATION OF LIABILITY IN GENERAL

160. The limitation of owner's liability is an outgrowth of the modern maritime law and codes.

Under the ancient civil law the owners were bound in solido for the liabilities of the ship arising out of contract, and in proportion to their respective interests for liabilities arising out of tort. This, however, merely settled the question of proportion as between the owners, but not the question of the extent of their liability. There seems to have been no limit on this as respects the value of the vessel. But the importance of encouraging maritime adventures, especially in the Middle Ages, when that was almost the only method of communication among nations, led to the gradual adoption, among the maritime continental codes, of

provisions limiting the liability of the owners to their respective interests in the ship. The greater frequency of maritime disasters in those days of frail craft emphasized the need of such a provision. Among others, we find these carried into the famous marine Ordonnance of Louis XIV, one provision of which is that the owners of a ship shall be answerable for the deeds of the master, but shall be discharged, abandoning their ship and freight.[1]

In the last century this policy was partially adopted in England, though their act of limited liability was then, and still is, less favorable to the vessel owner than most of the other acts.

The history of the development of this principle of modern maritime law is summarized by Judge Ware in the REBECCA,[2] decided long before there was any federal statute on the subject.

HISTORY AND POLICY OF FEDERAL LEGISLATION

161. The federal statutes are sections 4282–4289, Rev. St.,[3] Act June 26, 1884,[4] and Act June 19, 1886.[5] They are designed to encourage shipping by extending all possible protection to vessel owners.

In one sense the Harter Act (U. S. Comp. St. §§ 8029–8035) is an act limiting the liability of owners. This, however, regulates not so much their liability in amount as the question whether they are responsible at all or not. But the acts immediately in view in the principal connection are rather those limiting the amount of their liability where

§ 160. [1] 30 Fed. Cas. p. 1,206.
[2] 1 Ware (188) 187, Fed. Cas. No. 11,619.
[3] U. S. Comp. St. §§ 8020–8027.
[4] 23 Stat. 57 (U. S. Comp. St. § 8028); post, p. 494.
[5] 24 Stat. 80 (U. S. Comp. St. § 8027); post, p. 497.

some liability undoubtedly exists, and not the acts defining whether or not they are liable at all.

The first act above mentioned, now contained in sections 4282–4289 of the Revised Statutes, was passed on March 3, 1851, and is similar to the British statute, although in many respects the act itself and the construction placed upon it by the courts is more liberal to the vessel owner.

The statutes regulating the relation of shippers and carriers were not intended to repeal these statutes pro tanto, or to change their policy.[6]

Policy of the Act

The policy of these acts is explained by Mr. Justice Bradley in NORWICH & N. Y. TRANSP. CO. v. WRIGHT,[7] a leading case on the subject. In it he says:

"The great object of the law was to encourage shipbuilding, and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the hazards of the sea, and to the management of seafaring men, without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing, and internal

[6] So held as to the section of the Interstate Commerce Act which defines the carriers, whether by land or by water, which are subject to its provisions, and also as to the amendment making the initial carrier primarily responsible. 24 Stat. 379 (U. S. Comp. St. § 8563), and 34 Stat. 595 (U. S. Comp. St. § 8604aa); Hoffmans (D. C.) 171 Fed. 455; Burke v. Gulf, C. & S. F. Ry. Co. (Mun. Ct. N. Y.) 147 N. Y. Supp. 794.

[7] 13 Wall. 104, 20 L. Ed. 585. See, also, Deslions v. La Compagnie Générale Transatlantique, 210 U. S. 95, 120, 28 Sup. Ct. 664, 673, 52 L. Ed. 973.

improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions by which they are exempt from personal liability, or from liability except to a limited extent? The public interests require the investment of capital in shipbuilding quite as much as in any of these enterprises. And, if there exist good reasons for exempting innocent shipowners from liability, beyond the amount of their interest, for loss or damage to goods carried in their vessels, precisely the same reasons exist for exempting them to the same extent from personal liability in cases of collision. In the one case as in the other, their property is in the hands of agents whom they are obliged to employ."

Liability for Fires—"Design or Neglect"

The first section of this act[8] does (contrary to the remaining portion of it) define certain circumstances under which the question of the responsibility of the vessel owner is involved, rather than the question of its extent. It provides, in substance, that there shall be no liability at all for a fire unless the fire is caused by the design or neglect of the owner. This, therefore, furnishes a complete defense to any liability, and not, as the remainder of the act, a method of surrendering an interest in the vessel itself as a means of limiting the liability.

The meaning of these words "design or neglect" came up in Walker v. Western Transp. Co.,[9] and the construction placed upon them by the courts is, in substance, that the owners are exempted, though there might be some design or neglect of their agents or employés, provided the vessel owner was not guilty of any personal design or neglect. In the opinion of the court Mr. Justice Miller says:

"It is quite evident that the statute intended to modify the shipowner's common-law liability, for everything but

[8] Rev. St. § 4282 (U. S. Comp. St. § 8020).

[9] 3 Wall. 150, 18 L. Ed. 172. See, also, Ingram & Royle, Ltd., v. Services Maritimes, [1913] 1 K. B. 538.

the act of God and the king's enemies. We think that it goes so far as to relieve the shipowner from liability for loss by fire, to which he has not contributed either by his own design or neglect.

"By the language of the first section the owners are released from liability for loss by fire in all cases not coming within the exception there made. The exception is of cases where the fire can be charged to the owner's design or the owner's neglect.

"When we consider that the object of the act is to limit the liability of owners of vessels, and that the exception is not in terms of negligence generally, but only of negligence of the owners, it would be a strong construction of the act, in derogation of its general purpose, to hold that this exception extends to the officers and crews of the vessels as representing the owners. * * * We are, therefore, of opinion that, in reference to fires occurring on that class of vessels to which the statute applies, the owner is not liable for the misconduct of the officers and mariners of the vessel, in which he does not participate personally."

The later case of the Strathdon [10] involved an injury to the cargo from a heated flue in the ship. It appeared that the ship had been built by reputable builders. District Judge Thomas, in delivering the opinion of the court, discussed these words as follows:

"Hence the shipowners are not liable for injury to the cargo by fire, unless the cargo owner prove by a preponderance of evidence that the fire was caused by the design or neglect of the shipowners touching some duty that was imposed on them personally. A strained meaning should not be given to the words 'design or neglect.' The word 'design' contemplates a causative act or omission, done or suffered willfully or knowingly by the shipowner. It in-

[10] (D. C.) 89 Fed. 374. See, also, Diamond, [1906] p. 282 (an overheated stove).

volves an intention to cause the fire, or to suffer it to be caused by another. The culpability is in the nature of a trespass. It is not understood that there is any claim that the fire in question was caused by such design of the shipowners. The word 'neglect' has an opposite meaning. Negligence involves the absence of willful injury, and is an unintended breach of duty, resulting in injury to the property or person of another. Were the shipowners guilty of such breach of duty? The duty was to use due care (and it may be assumed that a high degree of care would be required) to furnish a donkey boiler, if one were furnished at all, so related to the other parts of the ship that the cargo carried in the ship would not be fired, directly or indirectly, by the action of such a boiler, at least when properly used. What should suitably prudent proposed shipowners do to fulfill this duty? If they were not competent shipbuilders, they should engage persons of proper skill and carefulness, and delegate to them the performance of the duty. If the duty could not be delegated so as to exempt them from liability, yet the care and skill of the builders would inure to the benefit of the shipowners. * * * If, now, the shipowner has employed such reputable constructors, and if the use of the completed ship for several years justify the propriety of its arrangement and precaution against fire, and if very skilled men pronounce that the work accords with the existing knowledge of their profession, and if no man be forthcoming to declare otherwise, why should the shipowners be held to have failed in skill or diligence? Their care and skill should be equal to the prevailing knowledge of the mechanism which they undertake to construct and use, and to that standard they have attained. If there was any higher skill or ability existing at any time before the fire, evidence of it should have been given. In the absence of such evidence, and in view of the ample proof that what was known on the subject was employed in the construction of the donkey boiler and flue, the shipowners must

be considered suitably diligent. It results that they are not liable for the injury to the cargo resulting from the fire."

Under this first section exempting the ship from entire liability, it has been held, in considering the peculiar phraseology of the section itself, that it only applied to fire on the ship, or to fires originating off the ship, and then communicating to the ship, and damaging goods on the ship. If the injury was received to goods on the wharf, or a wharfboat alongside of the ship, there would not be any exemption from liability under the terms of this first section.[11]

At the same time, an injury by fire, though not on the ship, can be set up in partial exemption under section 4283; as injuries by fire occurring without the privity or knowledge of owners come under the terms of that section.[12]

Hence, as to injuries by fire, the question of exemption may arise in two ways: First, if it occurred on board the ship without any personal design or neglect of the shipowner, complete exemption from liability can be pleaded; second, if it occurs in such way as to render the ship or the shipowner liable, the owner may plead partial exemption by surrendering the vessel and freight under the terms of section 4283.

Exemption from Contract Liability by Act June 26, 1884

The act of 1851 remained substantially as originally drafted, with the exception of two slight amendments (which are embodied in the text in the last edition of the Revised Statutes), until 1884.

But section 18 of the act of June 26, 1884, greatly extended its provisions. This section was not, in terms, an amendment of the act of 1851. This first act had only applied to cases ex delicto. By the new act the owners were allowed to limit their liability to their proportionate interests in

[11] Egypt (D. C.) 25 Fed. 320; City of Clarksville (D. C.) 94 Fed. 201; Black v. Ashley, 80 Mich. 90, 44 N. W. 1120.

[12] PROVIDENCE & N. Y. S. S. CO. v. HILL MFG. CO., 109 U. S. 578, 3 Sup. Ct. 379, 617, 27 L. Ed. 1038.

the vessel against obligations incurred by a master or part owner, whether on contract or tort. But this was only to debts for which they would become liable on account of their ownership in the vessel, and did not apply to personal contracts of their own.[13]

The difference between the two acts is explained in the Annie Faxon,[14] where the court says:

"We fail to find in the language of the eighteenth section of the act of June 26, 1884, a purpose to repeal the provisions of any pre-existing statute. While its terms are vague, it would appear that the sole object of the act was to fix the liability of the shipowners among themselves, and extend their right to limit their liability under the provisions of section 4283 to all cases of debt and liability under contract obligations made on account of the ship, with the exception of wages due employés. In Chappell v. Bradshaw (C. C.) 35 Fed. 923, the court construed it thus: 'There are no words in it which signify that it was intended to be a repealing statute. It appears to be another section, intended to take its place at the end of the act of 1851, as that act is given in the Revised Statutes. It is another section, extending the exemption of shipowners to all or any debts or liabilities of the ship, except seamen's wages and liabilities incurred before the passage of the act of 1884. Where a subsequent statute can be so construed as not to bring it in direct conflict with an antecedent law, it will not be held by the courts to repeal the former statute. Repeals by implication are seldom allowed, and to do so in this instance would be to do violence to the intention of Congress, which appears to have been to extend the act of 1851 to

[13] Pendleton v. Benner Line, 246 U. S. 353, 38 Sup. Ct. 330, 62 L. Ed. 770; Luckenbach v. W. J. McCahan Sugar Refining Co., 248 U. S. 139, 39 Sup. Ct. 53, 63 L. Ed. 170, 1 A. L. R. 1522; Capitol Transp. Co. v. Cambria Steel Co., 249 U. S. 334, 39 Sup. Ct. 292, 63 L. Ed. 631.

[14] 75 Fed. 312, 21 C. C. A. 366.

exempt shipowners from liabilities not embraced in this act.' In Gokey v. Fort (D. C.) 44 Fed. 364, Brown, J., said: 'I think the act of 1884 is doubtless to be treated as in pari materia with the act of 1851 (Rev. St. §§ 4233–4285), and designed to extend the act of 1851 to cases of the master's acts or contracts, and thus to bring our law into harmony with the general maritime law on this subject.'"

Amendment of June 19, 1886—Constitutionality

The act of June 19, 1886, was, in terms, an amendment of the act of 1851. The original act had debarred from its benefits the owners of any canal boat, barge, or lighter, or any vessel used in rivers or inland navigation. There had been some discussion as to the meaning of "inland navigation" under this law, and it had been held, among others, that the exception did not apply to the Great Lakes.[15]

The question of the constitutionality of these acts has been considered in two notable cases. In Lord v. Goodall, N. & P. S. S. Co.,[16] the constitutionality of the act was upheld under the commerce clause of the Constitution; that being a case of a vessel which navigated the high seas between ports of the same state. But afterwards the question as to the validity of the law in relation to vessels engaged solely in inland navigation came before the court, and the constitutionality of the law was sustained under the admiralty clause of the Constitution, independent of the commerce clause. The reasoning of the court is, in substance, that the doctrine of limited liability is an established part of the general maritime law, and that, while that general law has no place in our jurisprudence until adopted, the right to adopt it at any time is clearly vested in Congress. This question has been discussed fully in the chapter re-

[15] Craig v. Continental Ins. Co., 141 U. S. 638, 12 Sup. Ct. 97, 35 L. Ed. 886.

[16] 4 Sawy. 292, Fed. Cas. No. 8,506; Id., 102 U. S. 541, 26 L. Ed. 224.

lating to injuries resulting in death, to which reference is made.[17]

BY WHOM LIMITATION OF LIABILITY MAY BE CLAIMED

162. The benefit of the act may be claimed by any owner or part owner who had no privity or knowledge of the fault which gave rise to the liability.

Where a vessel is owned by several parties, and incurs liabilities, though those liabilities are incurred by the master or managing owner, the other part owners, who had no privity or knowledge of it, can claim the benefit of the act, and limit their responsibility to the value of their several part interests. This applies to debts and liabilities contracted in the usual course of trade of a vessel, as well as to torts.[18]

Its benefits may be claimed by the underwriter to whom a vessel has been abandoned, and against any liability incurred while the vessel is in charge of their agent.[19]

As the act is part of the general maritime law, it may be claimed by a foreigner.[20]

But it can be claimed only by an owner or charterer operating the ship. One who hires a ship under a contract which leaves her operation to some one else cannot take advantage of the statute.[21]

[17] Ante, p. 237; In re Garnett, 141 U. S. 1, 11 Sup. Ct. 840, 35 L. Ed. 631.

§ 162. [18] In re Leonard (D. C.) 14 Fed. 53; Warner v. Boyer (D. C.) 74 Fed. 873; S. A. McCaulley (D. C.) 99 Fed. 302; Douse v. Sargent (D. C.) 48 Fed. 695.

[19] Craig v. Continental Ins. Co., 141 U. S. 638, 12 Sup. Ct. 97, 35 L. Ed. 886.

[20] SCOTLAND, 105 U. S. 24, 26 L. Ed. 1001; Titanic v. Mellor. 233 U. S. 718, 34 Sup. Ct. 754, 58 L. Ed. 1171.

[21] Smith v. Booth (D. C.) 110 Fed. 680; Id., 122 Fed. 626, 58 C. C. A. 479; In re Reichert Towing Line, 251 Fed. 214, 163 C. C. A. 370.

AGAINST WHAT LIABILITIES LIMITATION MAY BE CLAIMED

163. Under the original act, the only liabilities against which exemption could be pleaded were those over which an admiralty court would have jurisdiction, whether in point of fact they were being asserted in an admiralty court or in a common-law court having concurrent jurisdiction.

But under the amendment of June 26, 1884, the defense was authorized against nonmaritime causes of action also.

The leading decision laying this down as the test under the original act is EX PARTE PHENIX INS. CO.[22] In that case a fire had communicated from the vessel to the shore, and had done damage on the shore. It was contended that the vessel owner could limit his liability against such a cause of action as this, and that it came within the language of the statute. The court, however, held that, as a cause of action originating on water, but consummate on land, could not be asserted in an admiralty court, the owner could not claim the benefit of the act, it being a part of the general maritime law, and resting mainly on that law for its validity.[23]

As examples of such causes of action, the defense has been sustained against fires on vessels,[24] and it may be pleaded not only against loss or damage to property, but also against personal injuries, including those resulting in death; and not only against those injured on the vessel itself which is setting up the exemption, but those also injured upon

§ 163. [22] 118 U. S. 610, 7 Sup. Ct. 25, 30 L. Ed. 274.

[23] See, also, Goodrich Transp. Co. v. Gagnon (C. C.) 36 Fed. 123.

[24] Ante, p. 348.

another vessel by the negligence of the vessel asserting the exemption.[25]

This includes injuries due to collision.[26]

Though the test of maritime jurisdiction was applied as to cases under the original act, the Supreme Court has held that the intent of the amendment of June 26, 1884, was to extend the exemption to nonmaritime causes of action as well, whether in contract or tort, in pursuance of the policy of encouraging American shipping.[27]

In this respect the policy of the act differs from that of the Harter Act. It has been seen[28] that the Harter Act is held to regulate only the relations between a shipper and his own ship, and not to affect any rights of action which parties on another ship injured by the offending ship may have.

On the other hand, this act enables the owner to defend himself not only against his own shippers or passengers, but against those on the other vessel as well. The reason for the difference of policy is that the Harter Act works an entire exemption from all liability, whereas this act permits the injured party to subject the owner's interest in the vessel, and merely protects the owner from additional liability beyond the value of his vessel.

The act may be invoked even against unseaworthiness caused by negligent loading, which is another striking difference between it and the Harter Act.[29]

[25] BUTLER v. BOSTON & S. STEAMSHIP CO., 130 U. S. 527, 9 Sup. Ct. 612, 32 L. Ed. 1017; Albert Dumois, 177 U. S. 240, 20 Sup. Ct. 595, 44 L. Ed. 751; City of Columbus (D. C.) 22 Fed. 460; Amsterdam (D. C.) 23 Fed. 112; Glaholm v. Barker, L. R. 2 Eq. 598; Id., 1 Ch. App. 223.

[26] NORWICH & N. Y. TRANSP. CO. v. WRIGHT, 13 Wall. 104, 20 L. Ed. 585; Great Western, 118 U. S. 520, 6 Sup. Ct. 1172, 30 L. Ed. 156.

[27] Richardson v. Harmon, 222 U. S. 96, 32 Sup. Ct. 27, 56 L. Ed. 110; Rochester (D. C.) 230 Fed. 519.

[28] Ante, p. 183.

[29] COLIMA (D. C.) 82 Fed. 665.

It may be pleaded against any wrongful acts of the master; for example, his wrongful sale of the cargo.[30]

PRIVITY OR KNOWLEDGE OF OWNER

164. In order for the owners to exonerate themselves, the negligent act must have been without their privity or knowledge. This means the personal privity or knowledge of the owners, and not the mere privity or knowledge of their agents; except that in the case of a corporation the privity or knowledge of the president or other high official above the grade of an employé is the privity or knowledge of the corporation, and would defeat the right of the corporation to the exemption.

The question what constitutes privity or knowledge has been the subject of much discussion. It is clear, at the outset, that actual knowledge of the owners would prevent them from claiming the exemption.[31]

Nor can it be claimed against liabilities which the owners have personally contracted; for instance, supplies ordered by them personally.[32]

It can be claimed only against those liabilities incurred as owner, not against contracts outside of the regular functions of the vessel owner. For instance, it has been held that it could not be set up against a vessel owner's contract to insure the goods shipped.[33]

It may be set up even against defects which would be held to constitute unseaworthiness if those defects were not discoverable by the ordinary examination of an unskilled per-

[30] Giles Loring (D. C.) 48 Fed. 463.

§ 164. [31] In re Meyer (D. C.) 74 Fed. 881.

[32] Amos D. Carver (D. C.) 35 Fed. 665; McPhail v. Williams (D. C.) 41 Fed. 61; Gokey v. Fort (D. C.) 44 Fed. 364.

[33] Laverty v. Clausen (D. C.) 40 Fed. 542.

son. In Quinlan v. Pew[34] the owners had chartered the vessel out to the master. There was a defect in the rigging at the time of the commencement of the voyage which the owners did not know, and which the master did know before she sailed. The owners had employed him to put the vessel in order, and he did not report this defect to them. In consequence of the defect, one of the crew was injured, and the owners attempted to limit their liability by appealing to this statute. This was contested on the ground that they ought to have known of this defect; that it was such a defect as affected the seaworthiness of the vessel, and that, therefore, they should be denied the exemption. The court, however, held that the knowledge of the agent employed by them to make these repairs, and their joint obligation to render the vessel seaworthy, did not make them privy to this defect, and therefore that they were entitled to limit their liability.

In the Warkworth,[35] which arose under the English statute, a collision was caused by a defect in the steering gear of the vessel. The owners had employed a man on shore to inspect the vessel; and, if he had done his duty, the defect could have been discovered. It was held that this fact did not prevent the owners from limiting their liability.

In Lord v. Goodall, N. & P. S. S. Co.,[36] Circuit Judge Sawyer thus discusses the meaning of the words "privity or knowledge":

"As used in the statute, the meaning of the words 'privity or knowledge' evidently is a personal participation of the owner in some fault or act of negligence causing or contributing to the loss, or some personal knowledge or means of

[34] 56 Fed. 111, 5 C. C. A. 438.

[35] 9 P. D. 20; Id., 9 P. D. 145.

[36] 4 Sawy. 292, Fed. Cas. No. 8,506. This case was taken to the Supreme Court, and was affirmed on the question of the constitutionality of the statute. See 102 U. S. 541, 26 L. Ed. 224. The merits do not seem to have come before the Supreme Court.

knowledge, of which he is bound to avail himself, of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting appropriate means to prevent it. There must be some personal concurrence, or some fault or negligence on the part of the owner himself, or in which he personally participates, to constitute such privity, within the meaning of the act, as will exclude him from the benefit of its provisions. Hill Mfg. Co. v. Providence & New York S. S. Co., 113 Mass. 499, 18 Am. Rep. 527. It is the duty of the owner, however, to provide the vessel with a competent master and a competent crew, and to see that the ship, when she sails, is in all respects seaworthy. He is bound to exercise the utmost care in these particulars—such care as the most prudent and careful men exercise in their own matters under similar circumstances; and if, by reason of any fault or neglect in these particulars, a loss occurs, it is with his privity, within the meaning of the act. * * * So, also, if the owner has exercised all proper care in making his ship seaworthy, and yet some secret defect exists, which could not be discovered by the exercise of such due care, and the loss occurs in consequence thereof, without any further knowledge or participation on his part, he is in like manner exonerated, for it cannot be with his 'privity or knowledge,' within the meaning of the act, or in any just sense; and the provision is that 'the liability of the owner * * * for any act, matter or thing, loss, etc., * * * occasioned without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending.' This language is broad, and takes away the quality of warranty implied by the common law against all losses except by the act of God and the public enemy. When the owner is a corporation, the privity or knowledge of the managing officers of the corporation

must be regarded as the privity and knowledge of the corporation itself."

But if the warranty of seaworthiness springs from an express contract made by the owner personally, and not as a mere implication, the owner cannot defend on the want of privity or knowledge, for he must know what contract he made personally.[87]

The question of the privity or knowledge of a corporation has been the subject of many interesting decisions. The result of these decisions is in substance that knowledge of some defect (even amounting to unseaworthiness) by some agent or employé is not the knowledge of the corporation, so as to defeat its right to the exemption; but the knowledge of the president or other high official of the corporation would be.

In the COLIMA,[88] the vessel was rendered unseaworthy by the method in which her master and crew loaded her, and it was contended that this defeated the corporation owner's right to the exemption. District Judge Brown, however, held that it did not. In his opinion he says:

"I think the petitioner, upon surrender of the freight ($23,846.58), is entitled to the exemption provided by section 4283 of the Revised Statutes, as not being privy to the defects in loading, or in the management of the ship at sea, nor having knowledge of them. Privity and knowledge are chargeable upon a corporation when brought home to its principal officers, or to the superintendent, who is its representative; and, if such privity or knowledge were here brought home to Mr. Schwerin, the petitioner's superintendent, they would be chargeable upon the corporation. But the privity or knowledge referred to in the statute is not that which arises out of the mere relation of principal

[87] Pendleton v. Benner Line, 246 U. S. 353, 38 Sup. Ct. 330, 62 L. Ed. 770.

[88] (D. C.) 82 Fed. 665. See, also, Erie Lighter 108 (D. C.) 250 Fed. 490, 494 (5).

and agent by legal construction. If it were, the statute would have nothing to operate upon, since the owner does not become liable at all except for the acts of himself or his agent. The object of this statute, however, was to abridge the liability of shipowners arising out of a merely constructive privity with their agent's acts, by introducing the rule of limited liability prevailing in the general maritime law, upon the terms prescribed in the statute, so far at least as respects damages for torts; while the act of 1884 extends this limitation to contracts also, except as to seamen's wages. * * * The knowledge or privity that excludes the operation of the statute must, therefore, be in a measure actual, and not merely constructive; that is, actual through the owner's knowledge, or authorization, or immediate control of the wrongful acts or conditions, or through some kind of personal participation in them. If Mr. Schwerin, the superintendent, had been either charged personally with the duty of directing or managing the distribution of this cargo with reference to the stability of the ship, or had assumed that function, the company would perhaps have been 'privy' to any defects in loading arising from the negligence of workmen under his immediate direction and control, whether he had actual knowledge of their delinquencies or not; since it is the duty of the person in immediate charge and actual control to see and know that proper directions are carried out. However that may be, Mr. Schwerin had no such duty, and assumed no such function. That duty, as the evidence shows, was committed to a competent stevedore, who acted under the immediate direction of the master and first mate, or in conjunction with them. The master and mate were the proper persons to determine and insure the necessary trim and stability of the ship, and are supposed to be specially qualified to do so. Lawrence v. Minturn, 17 How. 100, 111, 116, 15 L. Ed. 58. Whatever mistakes or negligence may have occurred in that work, there is no evidence that Mr. Schwer-

in knew of them; nor would they naturally have come to his knowledge; and I do not see the least reason to doubt his testimony that he believed that the ship was properly loaded, and perfectly seaworthy. The deck load was no indication to the contrary, because deck loads were customary, and safe with proper loading below."

In the Annie Faxon,[39] an injury happened from an explosion of the boiler. It appeared that the corporation owning the vessel had left the duty of inspecting this boiler to a competent marine engineer, and that the defect which caused the injury would not have been apparent to an unskilled person. It was held that the negligence of this employé to inspect the boiler properly was not such privity or knowledge of the corporation as defeated its right to the exemption. In the opinion Gilbert, J., says:

"We are unable to perceive how there can be imputation of privity or knowledge to a corporation of defects in one of its vessel's boilers, unless the defects were apparent, and of such a character as to be detected by the inspection of an unskilled person. The record fails to show that the defects were of this character. The testimony fairly sustains the finding of the court that the defects in the boiler were not patent, and that they could have been discovered only by applying the proper tests after the repairs of June, 1893. The test was not applied, and in that omission is one of the elements of the negligence of the petitioners, as found by the court. When we consider the purpose of the law which is under consideration, and the construction that has been given to it by the courts, it is obvious that the managers of a corporation whose business is the navigation of vessels are not required to have the skill and knowledge which are demanded of an inspector of a boiler. It is sufficient if the corporation employ, in good faith, a competent person to make such inspection. When it has employed

[39] 75 Fed. 312, 21 C. C. A. 366. See, also, Harry Hudson Smith, 142 Fed. 724, 74 C. C. A. 56.

such a person in good faith, and has delegated to him that branch of its duty, its liability beyond the value of the vessel and freight ceases, so far as concerns injuries from defects of which it has no knowledge, and which are not apparent to the ordinary observer, but which require for their detection the skill of an expert."

It was held, however, in this same case, that the requirement of section 4493 of the Revised Statutes (U. S. Comp. St. § 8269), making exceptions in favor of passengers on vessels, was not affected by the limited liability act, it being an entirely different statute, which, when considered in pari materia with the limited liability act, might be considered an exception to it.

In Craig v. Continental Ins. Co.,[40] the injury arose from the negligence of an employé of the insurance company to which the vessel had been abandoned. The employé was attempting to bring her to port in a disabled condition. The court held that his negligence was not the privity or knowledge of the insurance company, which owned her by virtue of the abandonment, and that they could claim the limitation of liability.

The habitual disregard of the rule against immoderate speed in a fog by the navigators of a ship does not deprive the owner of the right to a limitation unless knowledge of such practice is brought home to him.[41]

The failure of the captain of a ship to follow the directions of his Government in time of war does not defeat the owner's right to a limitation.[42]

On the other hand, in the Republic,[43] a barge belonging to a corporation was being used for an excursion, and while

[40] 141 U. S. 638, 12 Sup. Ct. 97, 35 L. Ed. 886.

[41] Deslions v. La Compagnie Générale Transatlantique, 210 U. S. 95, 28 Sup. Ct. 664, 52 L. Ed. 973; Boston Marine Ins. Co. v. Metropolitan Redwood Lumber Co., 197 Fed. 703, 117 C. C. A. 97.

[42] Lusitania (D. C.) 251 Fed. 715.

[43] 61 Fed. 109, 9 C. C. A. 386.

in such use, with many passengers aboard, was injured by a thunderstorm of no extraordinary severity. The barge had been inspected by the president of the corporation, and its unsafe condition was apparent. The court held that his knowledge was the knowledge of the corporation, and that they could not plead the statute in defense under such circumstances.

A superintendent with general control and management of a company's business is an official of such grade that his knowledge is the knowledge of the corporation.[44]

THE VOYAGE AS THE UNIT

165. The end of the voyage is the time as of which the exemption can be claimed, the voyage being taken as the unit. If the voyage is broken up by a disaster—as, for example, when the vessel is totally lost—that is taken as the time.

It can readily be understood that the act does not intend to permit the owners an exemption for an indefinite period prior to the accident. As the act of 1884 extended the right of exemption to debts as well as torts, the hardship of such a construction would be patent. Hence the courts have taken the voyage as the unit, and permitted the owner to protect himself simply against the liabilities of the voyage. This may be difficult to apply in many cases, and, in fact, in the case of boats which make very short voyages, may greatly curtail the benefit of the act to the owner; but that is settled as the test.

In the CITY OF NORWICH,[45] this was laid down as the rule by the United States Supreme Court. There the vessel was destroyed by an accident.

[44] Erie Lighter 108 (D. C.) 250 Fed. 490; Eastern S. S. Corporation v. Great Lakes Dredge & Dock Co. (C. C. A.) 256 Fed. 497.

§ 165. [45] 118 U. S. 468, 6 Sup. Ct. 1150, 30 L. Ed. 134. See, also, Americana (D. C.) 230 Fed. 853.

In the Great Western,[46] the vessel had one accident, and, proceeding on her voyage, had a second accident, entirely disconnected with the first—the result of the second accident being the wreck of the vessel. The court held that the termination of the voyage was the second accident, and that the owners could limit their liability for everything up to that point on that voyage.[47]

This means the straight voyage, not the round trip.[48]

EXTENT OF LIABILITY OF PART OWNERS

166. The part owners are liable each to the extent of their proportionate interest in the vessel, except that a part owner personally liable cannot claim the exemption at all.[49]

MEASURE OF LIABILITY—TIME OF ESTIMATING VALUES

167. The value of the vessel and pending freight is taken just after the accident, or end of the voyage, if the voyage is not broken up by the accident.

This is laid down by the Supreme Court in the case of the SCOTLAND,[50] and marks a material difference between the American and English act. Our act fixes the value of the vessel just after the accident, so that, if she is totally lost, the liability of the owner is practically nothing. The English act, on the other hand, takes a tonnage

[46] 118 U. S. 520, 6 Sup. Ct. 1172, 30 L. Ed. 156.

[47] See, also, Gokey v. Fort (D. C.) 44 Fed. 364; Geo. L. Garlick, 107 Fed. 542, 46 C. C. A. 456.

[48] Deslions v. La Compagnie Générale Transatlantique, 210 U. S. 95, 28 Sup. Ct. 664, 52 L. Ed. 973.

§ 166. [49] Whitcomb v. Emerson (D. C.) 50 Fed. 128; Giles Loring (D. C.) 48 Fed. 463.

§ 167. [50] 105 U. S. 24, 26 L. Ed. 1001.

valuation just before the accident, so that, in case of total loss, under the English act the owner must make up to the creditors of the vessel substantially the value of the vessel uninjured.

In the CITY OF NORWICH,[51] it is settled as the law of this country that the value is taken as of the end of the voyage, if not lost, but at the accident if the vessel is totally lost, and the voyage thereby broken up. Hence, if a vessel is partially injured, and subsequently raised and repaired, the owners can have the cost of raising and repairing taken into consideration, and receive credit for them in the valuation of the vessel.

The voyage itself may be rather an indefinite expression. For instance, it has been held in the case of a vessel used during a fishing season that the entire fishing season ought to be treated as one voyage, and that, therefore, the owners must account for the entire season's earnings in order to obtain the benefit of the limitation.[52]

SAME—PRIOR LIENS

168. The res must be surrendered clear of prior liens.

In fixing the value, the owner must account for the value of the res, clear of all liens or claims prior to the voyage.

The res, in the sense of this statute, may consist of more than one vessel. In the Bordentown,[53] several tugs belonging to the same owner were towing a large tow of many barges. After the towage commenced, one of the tugs was detached, but the two remaining tugs were guilty of an act of negligence, causing great loss. The court held

[51] 118 U. S. 468, 6 Sup. Ct. 1150, 30 L. Ed. 134. See, also, Abbie C. Stubbs (D. C.) 28 Fed. 719; Mauch Chunk (D. C.) 139 Fed. 747; Id., 154 Fed. 182, 83 C. C. A. 276.

[52] Whitcomb v. Emerson (D. C.) 50 Fed. 128.

§ 168. [53] (D. C.) 40 Fed. 682.

that the owner, in order to claim the benefit of the statute, must surrender the two tugs that participated in the negligent act, but not the one which had been detached before the act occurred.

In the Columbia,[54] a barge without means of propulsion was being towed by a tug, and a large quantity of freight was on the barge. When exemption was claimed against an accident, including large claims of personal injury, it was held that the owner was required to surrender both the tug and the barge.

The rule is that the vessels at fault must be surrendered, not those who are innocent instruments. For instance, in case of tug and tow, the question whether tug or tow should be surrendered would depend on the question which was liable, neither being responsible for the acts of the other.[55]

As stated above, the owner must also surrender the vessel clear of prior liens. If this were not so, he might, by mortgaging the vessel to her value, withdraw all funds from the creditors of the boat. Accordingly, in the Leonard Richards,[56] the court says:

"The first question suggested by counsel for the owners of the tug is as to the proper construction to be put upon the words 'value of the interest of the owner,' as used in the limited liability act. The section of the act in point, or so much of it as is necessary to quote, is as follows: 'The liability of the owner of any vessel, * * * for any loss, damage, or injury by collision, * * * done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of

[54] 73 Fed. 226, 19 C. C. A. 436.

[55] Eugene F. Moran v. New York Cent. & H. R. R. Co., 212 U. S. 466, 29 Sup. Ct. 339, 53 L. Ed. 600; Transfer No. 21, 248 Fed. 459, 160 C. C. A. 460; Erie Lighter 108 (D. C.) 250 Fed. 490; O'Brien Bros. (D. C.) 252 Fed. 185.

[56] (D. C.) 41 Fed. 818. See, also, Gokey v. Fort (D. C.) 44 Fed. 364.

the interest of such owner in such vessel, and her freight then pending.' Rev. St. U. S. § 4283. It appears in this case that supplies to a large amount had been furnished to this tug, which were at the time of the collision unpaid for, and which, under the law, were liens upon the vessel; and the insistment of counsel was that although the tug had an apparent value of $8,000, and had been appraised at that sum, yet the 'interest of the owner' in her ought not to be calculated upon that basis, but that from the appraised value of the vessel should be deducted the full amount of the debts and claims owed by the vessel, and the balance taken to be the true 'value of the interest' of the owner. In other words, that, while the stipulation filed, and upon which the tug was released from the custody of the officers and returned to her owner, was for $8,000, yet when the time came for payment of the sum into court in compliance with its condition, to be distributed among libelants and claimants according to law, there should be first deducted therefrom a sum equal to the full amount of all debts due for supplies, repairs, etc., for which liens against the vessel could be enforced, and the balance only brought here as the true value of the owner's interest, to be distributed pro rata among the libelants. Without considering whether the owner is not, by his own act, estopped from raising this question now, after entering into a stipulation to pay the full amount of the appraised value of the tug if she be found in fault to the other libelants, and in consideration thereof receiving security from the law from all further or greater liability, I am clearly of opinion that the real value of the vessel in fault, without regard to liens upon her at the termination of her voyage, upon which she negligently caused the injury complained of, measures justly and equitably the value of the interest of the owner therein as contemplated by the limited liability act."

SAME—DAMAGES RECOVERED FROM OTHER VESSEL

169. The owner must also surrender damages recovered from another vessel.

If the owner has proceeded against another vessel, and recovered damages for the injury to his vessel in the accident against which he is claiming liability, he must surrender these damages also; they being considered the representative of his vessel. This was held in O'Brien v. Miller.[57] In delivering the opinion of the court, Mr. Justice White says:

"The clear purpose of Congress was to require the shipowner, in order to be able to claim the benefit of the limited liability act, to surrender to the creditors of the ship all rights of action which were directly representative of the ship and freight. Where a vessel has been wrongfully taken from the custody of her owners, or destroyed through the fault of another, there exists in the owner a right to require the restoration of his property, either in specie or by a money payment, as compensation for a failure to restore the property. Manifestly, if the option was afforded the owner of the ship to receive back his property or its value, he could not, by electing to take its value, refuse to surrender the amount as a condition to obtaining the benefit of the act. * * * Indeed, that a right of action for the value of the owner's interest in a ship and freight is to be considered as a substitute for the ship itself, was decided in this court in the case of Sheppard v. Taylor, 5 Pet. 675, 8 L. Ed. 269. * * * Mr. Justice Story, delivering the opinion of the court, said (page 710, 5 Pet., and page 282, 8 L. Ed.): 'If the ship had been specifically restored, there is

§ 169. [57] 168 U. S. 287, 18 Sup. Ct. 140, 42 L. Ed. 469. See, also, St. Johns (D. C.) 101 Fed. 469.

no doubt that the seamen might have proceeded against it in the admiralty in a suit in rem for the whole compensation due to them. They have, by the maritime law, an indisputable lien to this extent. This lien is so sacred and indelible that it has on more than one occasion been expressively said that it adheres to the last plank of the ship. Relf v. The Maria, 1 Pet. Adm. 186, 195, note, Fed. Cas. No. 11,692; The Sydney Cove, 2 Dod. 13; The Neptune, 1 Hagg. Ad. 227, 239. And, in our opinion, there is no difference between the case of a restitution in specie of the ship itself and a restitution in value. The lien reattaches to the thing, and to whatever is substituted for it. This is no peculiar principle of the admiralty. It is found incorporated into the doctrines of courts of common law and equity. The owner and the lienholder, whose claims have been wrongfully displaced, may follow the proceeds wherever they can distinctly trace them. In respect, therefore, to the proceeds of the ship, we have no difficulty in affirming that the lien in this case attaches to them.' Nor does the ruling in the CITY OF NORWICH, supra, that the proceeds of an insurance policy need not be surrendered by the shipowner, conflict with the decision in Sheppard v. Taylor. The decision as to insurance was placed on the ground that the insurance was a distinct and collateral contract, which the shipowner was at liberty to make or not. On such question there was division of opinion among the writers on maritime law and in the various maritime codes. But, as shown by the full review of the authorities found in the opinion of the court and in the dissent in the CITY OF NORWICH, all the maritime writers and codes accord in the conclusion that a surrender, under the right to limit liability, must be made of a sum received by the owner as the direct result of the loss of the ship, and which is the legal equivalent and substitute for the ship. We conclude that the owner who retains the sum of the damages which have been awarded him for the loss of his ship and freight has not

surrendered 'the amount or value' (section 4283, Rev. St. U. S.) of his interest in the ship; that he has not given up the 'whole value of the vessel' (section 4284); that he has not transferred 'his interest in such vessel and freight' (section 4285). It follows that the shipowner, therefore, in the case before us, to the extent of the damages paid on account of the collision, was liable to the creditors of the ship, and the libelants, as such creditors, were entitled to collect their claim, it being less in amount than the sum of such proceeds."

SAME—FREIGHT

170. Pending freight must be surrendered.

The owner is also required to surrender pending freight. This has been held to include demurrage, and prepaid fare of passengers.[58]

If any freight has been earned or prepaid during the voyage, the owner must account for it; but, if the voyage is broken up, so that no freight is actually earned, then he cannot be made to pay it.[59]

The freight to be surrendered is the gross freight for the voyage.[60]

If the vessel owner is carrying his own goods, he must account for a fair freight for them.[61]

A government subsidy is not freight, and need not be surrendered.[62]

§ 170. [58] Giles Loring (D. C.) 48 Fed. 463; Main, 152 U. S. 122, 14 Sup. Ct. 486, 38 L. Ed. 381. As to the meaning of freight, see ante, p. 155, § 72.

[59] CITY OF NORWICH, 118 U. S. 468, 6 Sup. Ct. 1150, 30 L. Ed. 134.

[60] Abbie C. Stubbs (D. C.) 28 Fed. 719.

[61] Allen v. Mackay, 1 Spr. 219, Fed. Cas. No. 228.

[62] Deslions v. La Compagnie Générale Transatlantique, 210 U. S. 95, 28 Sup. Ct. 664, 52 L. Ed. 973.

SAME—SALVAGE AND INSURANCE

171. Salvage and insurance need not be surrendered, neither being an interest in the vessel or freight.

But the owner is not required to account for salvage earned during the voyage.[63]

And, if he has taken out insurance, he is not required to account for the insurance money collected by him; that being a collateral undertaking, and not an interest in the vessel. On this subject Mr. Justice Bradley says in the CITY OF NORWICH.[64]

"The next question to be considered is whether the petitioners were bound to account for the insurance money received by them for the loss of the steamer, as a part of their interest in the same. The statute (section 4283) declares that the liability of the owner shall not exceed the amount or value of his interest in the vessel and her freight; and section 4285 declares that it shall be a sufficient compliance with the law if he shall transfer his interest in such vessel and freight, for the benefit of claimants, to a trustee. Is insurance an interest in the vessel or freight insured, within the meaning of the law? That is the precise question before us.

"It seems to us, at first view, that the learned justice who decided the case below was right in holding that the word 'interest' was intended to refer to the extent or amount of ownership which the party had in the vessel, such as his aliquot share, if he was only a part owner, or his contingent interest, if that was the character of his ownership. He might be absolute owner of the whole ship, or he might own but a small fractional part of her, or he might have a tem-

§ 171. [63] In re Meyer (D. C.) 74 Fed. 881.

[64] 118 U. S. 468, 6 Sup. Ct. 1150, 30 L. Ed. 134. See, also, Pere Marquette 18 (D. C.) 203 Fed. 127.

porary or contingent ownership of some kind, or to some extent. Whatever the extent or character of his ownership might be—that is to say, whatever his interest in the ship might be—the amount or value of that interest was to be the measure of his liability.

"This view is corroborated by reference to a rule of law which we suppose to be perfectly well settled, namely, that the insurance which a person has on property is not an interest in the property itself, but is a collateral contract, personal to the insured, guarantying him against loss of the property by fire or other specified casualty, but not conferring upon him any interest in the property. That interest he has already, by virtue of his ownership. If it were not for a rule of public policy against wagers, requiring insurance to be for indemnity merely, he could just as well take out insurance on another's property as on his own; and it is manifest that this would give him no interest in the property. He would have an interest in the event of its destruction or nondestruction, but no interest in the property. A man's interest in property insured is so distinct from the insurance that, unless he has such an interest independent of the insurance, his policy will be void."

PROCEDURE—TIME FOR TAKING ADVANTAGE OF STATUTE

172. The owner may take advantage of the statute at any time before he is actually compelled to pay the money.

Under the American practice, he may contest his liability for any damages at all, fight that through all the courts, and, if finally defeated, take advantage of the statute.[65]

§ 172. [65] BENEFACTOR, 103 U. S. 239, 26 L. Ed. 351; S. A. McCaulley (D. C.) 99 Fed. 302.

He does not lose his right by giving bond in the original suit, either in the trial court or the appellate court, or by failure to have an appraisal or otherwise follow strictly the procedure prescribed.[66]

SAME—DEFENSE TO SUIT AGAINST OWNER, OR INDEPENDENT PROCEEDING

173. The statute may be set up either by defense to a suit brought against the owner, or by an independent proceeding under the federal admiralty rules.

If it is desired to defend against one claim, the simplest method is by answer or plea in the suit asserting that claim against the owner. Hence it is settled that this is a proper mode of taking advantage of the statute, and it may be invoked either in the federal or state courts.[67]

Where the claims are many, and it is desired to convene them all in one proceeding, the usual method is by petition in the federal court. The procedure on these petitions is regulated by admiralty rules 54–58.[68]

Such a petition may be filed, though but one claim is being asserted against the ship or owner.[69]

It may be filed before any suit is brought at all against the owner.[70]

[66] Rochester (D. C.) 230 Fed. 519; T. W. Wellington (D. C.) 235 Fed. 728; Ethelstan (D. C.) 246 Fed. 187.

§ 173. [67] SCOTLAND, 105 U. S. 24, 26 L. Ed. 1001; Great Western, 118 U. S. 520, 6 Sup. Ct. 1172, 30 L. Ed. 156; Loughin v. McCaulley, 186 Pa. 517, 40 Atl. 1020, 48 L. R. A. 33, 65 Am. St. Rep. 872.

[68] As this treatise is on admiralty jurisdiction, and can only cursorily allude to procedure, the discussion of procedure on this act will necessarily be very brief. The reader is referred to the excellent treatise of Mr. Benedict on Admiralty for further details of procedure.

[69] White v. Island Transp. Co., 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993; Strong v. Holmes, 238 Fed. 554, 151 C. C. A. 490.

[70] Ex parte Slayton, 105 U. S. 451, 26 L. Ed. 1066.

If suits are pending against the owner in other jurisdictions, the proceeding in the admiralty court is exclusive; and litigants in the other courts may be enjoined from litigating further in those courts, and may be compelled to come into the admiralty court. This is one of the cases in which injunctions to proceedings in state courts are not forbidden by section 720 of the Revised Statutes.[71]

METHOD OF DISTRIBUTION

174. Under the express provisions of the statute, all claims filed, whether they have an admiralty lien attached or are mere personal claims against the owner, are paid pro rata.[72]

This pro rata rule applies simply to the claims on the voyage, which, as seen above, is taken as the unit. Questions of priority as between those claims and claims on other voyages cannot well arise in the proceeding; for it has been seen that, when the owner seeks the benefit of the statute, he must surrender the res clear of all prior liens or claims against it. Hence, under this procedure, the court has in its possession an unincumbered res, and divides that pro rata among those who have suffered on that special voyage, regardless of the marshaling of other claims which would take place if no proceeding for limitation of liability was pending.

[71] U. S. Comp. St. § 1242; PROVIDENCE & N. Y. S. S. CO. v. HILL MFG. CO., 109 U. S. 578, 3 Sup. Ct. 379, 617, 27 L. Ed. 1038; In re Whitelaw (D. C.) 71 Fed. 733, 735; San Pedro, 223 U. S. 365, 32 Sup. Ct. 275, 56 L. Ed. 473, Ann. Cas. 1913D, 1221 (holding also that an injunction is not necessary, and that the proceeding itself has the effect of a statutory injunction).

§ 174. [72] Butler v. Boston & S. S. S. Co., 130 U. S. 527, 9 Sup. Ct. 612, 32 L. Ed. 1017; Maria & Elizabeth (D. C.) 12 Fed. 627; Catskill (D. C.) 95 Fed. 700; St. Johns (D. C.) 101 Fed. 469; Glaholm v. Barker, L. R. 2 Eq. 598; Id., 1 Ch. App. 223; Boston Marine Ins. Co. v. Metropolitan Redwood Lumber Co., 197 Fed. 703, 117 C. C. A. 97.

CHAPTER XVII

OF THE RELATIVE PRIORITIES OF MARITIME LIENS AS AMONG EACH OTHER AND ALSO AS BETWEEN THEM AND NONMARITIME LIENS OR TITLES *

RELATIVE RANK AS AFFECTED BY NATURE OF CLAIMS

175. The order in which liens are paid depends upon four contingencies:

(a) Their relative merit.

(b) The time at which the lien vested.

(c) The date at which proceedings are commenced for its enforcement.

(d) The date of the decree.

The relative rank of maritime liens is the subject of much conflicting decision, from which it is impossible to extract any inflexible general rule. While there are elementary

*Modified by Merchant Marine Act approved June 5, 1920, passed too late for discussion.

principles underlying the doctrine, they may be affected at any time by special equities or circumstances superseding the general principles, and forming an exception to them. On this subject, Judge Brown, when District Judge of the Eastern District of Michigan, said in the CITY OF TAWAS:[1]

"The subject of marshaling liens in admiralty is one which, unfortunately, is left in great obscurity by the authorities. Many of the rules deduced from the English cases seem inapplicable here. So, also, the principles applied where the contest is between two or three libelants would result in great confusion in cases where 50 or 60 libels are filed against the same vessel. The American authorities, too, are by no means harmonious, and it is scarcely too much to say that each court is a law unto itself."

This marshaling of liens, being intended to work justice among the lienors, should not be so applied as to work injury to third parties.[2]

SAME—CONTRACT LIENS IN GENERAL

176. These must first be considered in reference to their general nature, as there is supposed to be an inherent merit in certain ones over others, in the absence of special equities arising from the comparative dates of their service and other considerations.

177. Among contract liens in general the order of rank may be stated:

(a) Seamen's wages.
(b) Salvage.
(c) Materials, supplies, advances, towage, pilotage, and general average.
(d) Bottomry.
(e) Nonmaritime liens and titles.

§ 175. [1] (D. C.) 3 Fed. 170.
[2] Chioggia, [1898] P. 1.

SAME—SEAMEN'S WAGES

178. It is a favorite principle of the admiralty that seamen's wages are of the highest rank and dignity, adhering to the last plank of a ship, and ranking all other contract liens of the same relative dates.

In the Virgo,[3] District Judge Benedict, in passing upon their rank as compared to salvage and other supplies, held them to rank even supplies furnished after the vessel was brought into port and after the wages had accrued, as the supplies were of a nature that did not add anything to the value of the vessel, and as the time was so short that the seamen could hardly have been responsible for not proceeding more promptly. In the opinion he says:

"I am of the opinion, therefore, that the wages of the seamen, which are nailed to the last plank of the ship, and which under no circumstances contributed to the general average, as well as the salvage demand, are entitled to priority in payment over the demands of the other libelants, no one of whom, it will be observed, in any degree added by their services to the value of the vessel, or in the slightest degree increased the fund realized from her sale. It is a case of some hardship to the materialmen, no doubt, but no greater than in the ordinary case where the vessel proves insufficient in value to pay her bills. The hardship in this case arises, not from any fault on the part of the salvors or the seamen, but from the fact that the materialmen furnished what they did to a vessel so largely incumbered by liens superior in grade to their demands."

In the Paragon,[4] Judge Ware said:

"Among privileged debts against a vessel, after the expenses of justice necessary to procure a condemnation and

§ 178. [3] (D. C.) 46 Fed. 294.
[4] 1 Ware, 326, Fed. Cas. No. 10,708.

sale, and such charges as accrue for the preservation of the vessel after she is brought into port (1 Valin, Comm. 362; Code Commer. No. 191), the wages of the crew hold the first rank, and are to be first paid. And so sacred is this privilege held that the old ordinances say that the savings of the wreck, are to the last nail, pledged for their payment. Consulat de la Mer, c. 138; Cleirac sur Jugemens d'Oleron, art. 8, note 31. And this preference is allowed the seamen for their wages independently of the commercial policy of rewarding their exertions in saving the ship, and thus giving them an interest in its preservation. The priority of their privilege stands upon a general principle affecting all privileged debts; that is, among these creditors he shall be preferred who has contributed most immediately to the preservation of the thing. 2 Valin, Comm. 12, liv. 3, tit. 5, art. 10. It is upon this principle that the last bottomry bond is preferred to those of older date, and that repairs and supplies furnished a vessel in her last voyage take precedence of those furnished in a prior voyage, and that the wages of the crew are preferred to all other claims, because it is by their labors that the common pledge of all these debts has been preserved, and brought to a place of safety. To all the creditors they may say, 'Salvam fecimus totius pignoris causam.' The French law (Ord. de la Mer. liv. 1, tit. 14, art. 16; Code Commer. 191) confines the priority of the seamen for their wages to those due for the last voyage, in conformity with the general rule applicable to privileged debts; that is, that the last services which contribute to the preservation of the thing shall be first paid. But this restriction is inapplicable to the engagements of seamen in short coasting voyages, which are not entered into for any determinate voyage, but are either indefinite as to the terms of the engagement, and are determined by the pleasure of the parties, or are for some limited period of time."

Wages for a voyage have been also held to rank a bottomry bond executed for the necessities of that very voyage,

because, but for the efforts of the seamen, the vessel would not have reached port, and the bottomry bondholder would have had nothing to hold for his claim.[5]

If they rank subsequent materials under the circumstances just explained, a fortiori they rank materials and supplies practically concurrent with them.[6]

They also rank salvage, and damage claims incurred on a previous voyage, under the principle, which we have seen running through the admiralty law, that the prior lienholders have a jus in re or a proprietary interest in the ship itself, and that efforts tending to the preservation of the res are incurred for their benefit.[7]

SAME—SALVAGE

179. Salvage may rank any prior lien for which it saves the res.

It may not be entirely accurate to put salvage behind even seamen's wages when we consider its nature.

The salvor ranks seamen's wages incurred prior to the salvage services, upon this same principle that it tends to the preservation of the res, without which the seamen themselves might lose their security.[8]

In the leading case of the FORT WAYNE,[9] the court, discussing this question, and deciding that salvage was ahead of prior seamen's wages, says:

"It may be remarked here that it does not admit of doubt, nor is it controverted in this case, that, if there had been a salvage service rendered by the wrecking company within

[5] DORA (C. C.) 34 Fed. 348; Irma, 6 Ben. 1, Fed. Cas. No. 7,064.

[6] Saylor v. Taylor, 23 C. C. A. 343, 77 Fed. 476.

[7] Lillie Laurie (C. C.) 50 Fed. 219.

§ 179. [8] Selina, 2 Notes Cas. Ad. & Ec. 18; Athenian (D. C.) 3 Fed. 248.

[9] 1 Bond, 476, Fed. Cas. No. 3,012.

the meaning of the maritime law, it imports a lien in their favor which has priority over claims for wages earned, or supplies furnished, before the sinking of the boat. This is well-established law, and has its basis in obvious principles of justice and reason. Meritorious salvors stand in the front rank of privilege, and the rights of those having liens before the salvage service must be secondary to those having a salvage claim. This principle is well stated in Coote's Admiralty Practice. The author says (page 116): 'The suitor in salvage is highly favored in law, on the assumption that, without his assistance, the res might have been wholly lost. The service is, therefore, beneficial to all parties having either an interest in or a claim to the ship and her freight and cargo.' And again (page 117), it is laid down that 'salvage is privileged before the original or prior wages of the ship's crew, on the ground that they are saved to them as much as, or eadem ratione qua, the ship is saved to the owners.' This doctrine is so well settled, both by the English and American authorities, that it is useless to multiply citations."

For the same reason salvage is superior in dignity to materials and supplies.[10].

It is also ahead of the cargo's claim for general average arising out of a jettison on the voyage when the vessel was subsequently wrecked, since the salvor saved the only property against which the claim for general average could be asserted.[11]

Judge Longyear, in delivering the opinion, says:

"It was conceded on the argument, and such is undoubtedly the law, that the lien for salvage takes precedence of the lien for general average. The libel of the insurance companies in this case is in terms for general average, and I can see nothing in the circumstances of the case to war-

[10] M. Vandercook (D. C.) 24 Fed. 472; Virgo (D. C.) 46 Fed. 294; Lillie Laurie (C. C.) 50 Fed. 219.

[11] Spaulding, 1 Brown, Ad. 310, Fed. Cas. No. 13,215.

rant the court in holding it to be anything else, even if the libel had been otherwise. Without the salvage services, the whole was a loss. With the salvage services, the loss is reduced to a part only. In the former case there would have been nothing left upon which a lien for general average could attach. In the latter case it has something upon which it may attach, solely because of the salvage services; and it would be not only contrary to the general rule of law above stated, but unjust and inequitable, to place such lien as to the part thus saved upon the same footing, as to precedence, as the lien for the salvage services."

SAME—MATERIALS, SUPPLIES, ADVANCES, TOWAGE, PILOTAGE, AND GENERAL AVERAGE

180. Materials, supplies, advances, towage, pilotage, and general average are, in the absence of special circumstances, equal in dignity.

These may be considered as of the same relative rank, in the absence of special circumstances or equities.

For some time there was quite a conflict in the decisions on the question whether the liens of materialmen arising out of a state statute were equal in dignity to those arising under the general admiralty law. On principle there is no sound reason for any such distinction. The only reason why these state statutes are given force at all is that the subject-matter is maritime in its nature, and that the statutes merely superadd the remedy in rem. If marine in its nature, it ought to be marine in its rights. The state statute adds nothing to its dignity or to its character. It merely changes a presumption of credit. Hence the later authorities have settled that foreign and domestic liens of material men rank alike.[12]

§ 180. [12] Guiding Star (D. C.) 9 Fed. 521; Id. (C. C.) 18 Fed. 264; Wyoming (D. C.) 35 Fed. 548. This question is unimportant

Claims of this nature also rank a prior bottomry. In the Jerusalem,[13] Mr. Justice Story gives the reason for this. He says:

"If, then, the repairs in this case were a lien on the ship, it remains to consider whether they constitute a privileged lien, entitled to a preference over a bottomry interest; for the proceeds now in court are insufficient to answer both claims. In point of time the bottomry interest first attached, and the right became absolute by a completion of the voyage before the repairs were made. Upon general principles, then, the rule would seem to apply, 'Qui prior est tempore, potior est jure.' But it is to be considered that the repairs were indispensable for the security of the ship, and actually increased her value. They are, therefore, not like a dry lien by way of mortgage, or other collateral title. The case is more analogous to that of a second bottomry bond, or the lien of seamen's wages, which have always been held to have a priority of claim, although posterior in time, to the first bottomry bond. Let a decree be entered for payment of the sum claimed by the petitioner out of the proceeds of the sale."

In the Felice B.,[14] Judge Benedict gave preference, under similar circumstances, because the repairs went into the ship, and tended to increase her value, and to enhance to that extent the price which she brought at auction; and he therefore thought it inequitable that the bottomry bondholder should claim this increment, which was not in existence when he loaned his money.

As to the relative rank of claims for unpaid towage and claims of materialmen, there is no reason for any distinc-

now, as the liens both of foreign and domestic materialmen are regulated by the act of Congress of June 23, 1910 (36 Stat. 604, U. S. Comp. St. §§ 7783–7787).

[13] 2 Gall. 345, Fed. Cas. No. 7,294.

[14] (D. C.) 40 Fed. 653. See, also, Aina (D. C.) 40 Fed. 269.

tion between them, in the absence of special equities, and the courts put them upon the same basis.[15]

But in the Mystic,[16] Judge Blodgett seemed to look upon tugboat men with special favor. The case arose in the city of Chicago, where the ordinances required vessels to use tugs, and where, on account of the narrow and crowded channels, it is a physical impossibility for sail vessels to reach their destination without tugs. Under these special circumstances he held that the value of the towage service was about equal to that of the seamen, as the tug was doing seamen's work, and he placed the tow bills immediately after the seamen's wages, and ahead of domestic supply claims.

In England claims for necessaries on domestic ships do not rank as maritime liens, their act of Parliament being held to give a mere right of arrest.[17]

SAME—BOTTOMRY

181. Bottomry ranks low among maritime liens, as the lender is paid for the risk he runs by a high rate of interest.

Among bottomry bonds on the same voyage, though the dates may be slightly different, there is no priority.[18] But the bottomry bondholder is relegated to the background when he comes in competition with seamen's wages, salvage, materials, or a claim for general average arising on

[15] Saylor v. Taylor, 23 C. C. A. 343, 77 Fed. 476; Sea Witch, 3 Woods, 75, Fed. Cas. No. 11,289.

[16] (D. C.) 30 Fed. 73. In the Olga (D. C.) 32 Fed. 329, Judge Brown, of New York, classified towage service taken necessarily and as part of a pilotage service in the same way; but he carefully distinguished this from ordinary towage.

[17] Mayer's Admiralty Jur. & Pr. 25, 47, 51; Sara, 14 A. C. 209.

§ 181. [18] DORA (D. C.) 34 Fed. 343.

the same voyage.[19] The reason is that he stands in the shoes of the owner, and has, as heretofore explained, a proprietary interest in the ship, which estops him from questioning the priority of maritime liens to supply her, or to render her more valuable. In addition, he can charge a premium on the ship at a high rate of interest. He therefore becomes practically an insurer against perils of the sea, and, when they arise, he cannot be heard to complain that those who labored to rescue the vessel from them should be preferred in the distribution. Accordingly, these claims for general average arising on the voyage, and the claims of the agents at the port of destination for putting the ship in better shape, are preferred to a bottomry bond. On this point Judge Billings says in the Dora:[20]

"Whoever lends money upon a bottomry obligation for the ordinary transactions of her voyage has a lien upon the vessel which outranks all lien holders save the mariners for their wages. But where maritime services or sacrifices or expenditures are rendered necessary which carry with them maritime liens, the holder of the bottomry bond, like any other mortgagee or pledgee, has his conditional interest burdened precisely as if he were to that extent an owner. Indeed, the bottomry holder can be no more than absolute owner, so far as third persons are concerned. To hold any more restricted doctrine would prejudice the interests of the bottomry holder himself. It is for his interest, as well as for that of all other absolute or conditional owners, that the whole should be saved by a sacrifice of a part, and that the whole thus saved should contribute to make good the sacrifice, and that salvors and all others who render benefits which save or render available the bottom pledged to him should have a lien upon that bottom, even against him. See Williams & B. Adm. Jur. 64, 65, and Macl. Shipp. 702–705. I think that, upon reason and authority, the general average

[19] Id.

[20] See, also, ALINE, 1 W. Rob. Ad. 112.

should be paid before the bottomry bonds. The transactions out of which the general average arose were subsequent to these bonds, and aided in providing and making available the bottom which these bonds contingently represented."

SAME—NONMARITIME LIENS AND TITLES

182. Nonmaritime liens and titles rank below maritime liens.

The mortgagee is worse off than any, for his claim is not marine. He claims through the owner, from whom he is only one step removed, and accordingly all marine claims are preferred to his debt; and recording it under section 4192 of the Revised Statutes (U. S. Comp. St. § 7778) does not affect this principle.[21]

A maritime lien is not displaced by a sale to an innocent purchaser, in the absence of laches in its enforcement, nor by a common-law reservation of title.[22]

The possessory lien of a shipwright will be recognized when a ship is seized under admiralty process. If the work is of a nature that would create a maritime lien, it will be treated as such. If not, it will be classified as a common-law lien, and protected in the distribution of the remnants after the satisfaction of maritime liens.[23]

§ 182. [21] J. E. RUMBELL, 148 U. S. 1, 13 Sup. Ct. 498, 37 L. Ed. 345. The mortgagee has the same right as the owner through whom he claims to intervene and defend against liens asserted to be prior, and to claim the remnants after the maritime liens are satisfied. Conveyor (D. C.) 147 Fed. 586; Rupert City (D. C.) 213 Fed. 263.

[22] San Raphael, 141 Fed. 270, 72 C. C. A. 388; Hope (D. C.) 191 Fed. 243.

[23] Ulrica (D. C.) 224 Fed. 140; John J. Freitus (D. C.) 252 Fed. 876.

SAME—TORT LIENS

183. These claims, whether for pure torts or torts where there are also contract relations, rank prior contract liens, and probably subsequent contract liens, where the contract claimant has an additional remedy against the owner.

These claims, as a general rule, rank prior contract claims. The leading case on this subject is the JOHN G. STEVENS.[24] Mr. Justice Gray, in delivering the opinion of the court in that case, says:

"The collision, as soon as it takes place, creates, as security for the damages, a maritime lien or privilege—jus in re—a proprietary interest in the offending ship, and which, when enforced by admiralty process in rem, relates back to the time of the collision. The offending ship is considered as herself the wrongdoer, and as herself bound to make compensation for the wrong done. The owner of the injured vessel is entitled to proceed in rem against the offender, without regard to the question who may be her owners, or to the division, the nature, or the extent of their interests in her. With the relations of the owners of those interests, as among themselves, the owner of the injured vessel has no concern. All the interests existing at the time of the collision in the offending vessel, whether by way of part ownership, of mortgage, of bottomry bond, or of other maritime lien for repairs or supplies, arising out of contract with the owners or agents of the vessel, are parts of the vessel herself, and as such are bound by and responsible for her wrongful acts. Any one who had furnished necessary supplies to the vessel before the collision, and had thereby acquired, under our law, a maritime lien or privi-

§ 183. [24] 170 U. S. 113, 18 Sup. Ct. 544, 42 L. Ed. 969. See, also, Escanaba (D. C.) 96 Fed. 252; Veritas, [1901] P. 304.

lege in the vessel herself, was, as was said in the Bold Buccleugh, before cited, of the holder of an earlier bottomry bond, under the law of England, 'so to speak, a part owner in interest at the date of the collision, and the ship in which he and others were interested was liable to its value at that date for the injury done, without reference to his claim.' 1 Moore, P. C. 285."

This reasoning is a necessary deduction from the doctrine, that an admiralty claimant has not merely a right to arrest a vessel, but a proprietary interest in the vessel itself—a jus in re. Consequently, any contract claimant who permits the vessel against which he has a claim to be navigated, assumes the risks of navigation to that extent, and holds her out to the world as liable to those with whom she is brought into relations even involuntarily on their part. The only question directly decided in this case was that a claim for damages from negligent towage ranked a prior claim for materials and supplies. The questions as to all other contracts were carefully reserved by the court, but the line of reasoning which the court follows is equally applicable to any other contract claim.

On this question the earlier decisions in the New York circuit, which are usually of such high authority that the admiralty lawyer instinctively turns to them first, cannot now be relied on. The JOHN G. STEVENS cites a number of them for the purpose of deciding adversely to the doctrine which they had promulgated. It had been the preponderance of authority in that circuit that contract claims ranked tort claims. The principal reason given for this was that these tort claims were perils of the sea, against which the owner could insure. In arriving at that decision the New York judges had discussed the English cases on which the contrary doctrine had been based, and concluded that they had not passed upon the question at all, but were governed by peculiar circumstances arising out of the fact that the vessels in the English cases had

nearly always been foreign vessels. The New York judges also had attempted to draw a distinction between claims of pure tort and claims of quasi tort arising out of contract. This was to meet the suggestion of Dr. Lushington in the ALINE,[25] in which he had said that the contract creditor had his option whether to deal with the ship or not, but the tort creditor had not. Accordingly, the New York courts argued that this principle could only apply to torts like collision, in any event, and could not apply to cases arising out of negligent towage, or other such cases arising out of contract, though torts in form, where there had been such negligence. This distinction, also, is overruled by the JOHN G. STEVENS,[26] which was a case of negligent towage, and in which the Supreme Court, after considering the question fully, decided that cases of tort, whether arising out of contract or not, all stood on the same basis.

The JOHN G. STEVENS reserves the question whether the claim for tort should be preferred to a prior claim for seamen's wages, but the reasoning of that case applies with equal force to claims of as high merit as seamen's wages, and it is believed that, when the question is fairly presented, a preference will be given to tort claims even over claims for prior wages.[27]

The ELIN [28] decides that preference should be given even to subsequent wages on the same voyage. On this point Sir Robert Phillimore quoted approvingly from an opinion of Dr. Lushington, as follows:

"I adhere to this opinion, and I do so especially for the

[25] 1 W. Rob. Ad. 112.

[26] 170 U. S. 113, 18 Sup. Ct. 544, 42 L. Ed. 969.

[27] Rusk v. Freestone, 2 Bond, 234, Fed. Cas. No. 12,143; F. H. Stanwood, 49 Fed. 577, 1 C. C. A. 379; Nettie Woodward (D. C.) 50 Fed. 224; Evolution (D. C.) 199 Fed. 514. But in the New York district the John G. Stevens decision is still applied strictly, and seamen not in fault are preferred to collision liens. C. J. Saxe (D. C.) 145 Fed. 749.

[28] 8 P. D. 39.

following reasons: That by the maritime law of all the principal maritime states the mariner has a lien on the ship for his wages against the owner of that ship. That he has also a right of suing the owner for wages due to him. That some uncertainty may exist as to the mariner's lien when in competition with other liens or claims, and amongst these I might instance the case of a ship in the yard of a shipwright. In such a case I should have no difficulty in saying that the lien of the shipwright would be superior to the lien of the mariner. That, in the case of a foreign ship doing damage and proceeded against in a foreign court, the injured party has no means of obtaining relief save by proceeding against the ship itself; and that, I apprehend, is one of the most cogent reasons for all our proceedings in rem. That, in a case where the proceeds of a ship are insufficient to compensate for damages done, to allow the mariner to take precedence of those who have suffered damage would be to exonerate so far the owner of the ship, to whom the damage is imputed, at the expense of the injured party—the wrongdoer at the expense of him to whom wrong has been done. Then, as to the mariner, what is the hardship to which he is exposed? It is true, he is debarred from proceeding against the ship, but his right to sue the owner remains unaffected. It is, however, not to be forgotten that in all these cases of damage, or nearly all, the cause of the damage is the misconduct of some of the persons composing the crew. This is not the case of a bankrupt owner. It will be time to consider such case when it arises."

This reasoning, that the seaman has a double remedy against the owner, and that it would be inequitable to allow the owner, to diminish the security of the party injured through his own torts by allowing the seamen to be paid out of the vessel, is certainly a strong one, and receives added strength in America by the fact that the act of June 26, 1884, allowing the vessel owners to plead their limita-

tion of liability against contract debts, expressly reserves the rights of seamen; and so it would seem equitable that a party asserting a lien by tort should be preferred to seamen's wages, though the question cannot be considered as settled.

An instance of such torts is an unlawful conversion by the master.[29]

RELATIVE RANK AS AFFECTED BY DATE OF VESTING AMONG LIENS OF SAME CHARACTER

184. Among contract liens of the same character, those furnished on the last voyage rank those furnished on a prior voyage; the reason being that they are supposed to contribute more immediately to the preservation of the res, and therefore are for the benefit of the prior liens.[30]

In the old days, when voyages were measured by long periods of time, this was a just rule; but now, when voyages are comparatively short, it has been found necessary in the interest of justice to introduce considerable modifications. For instance, in litigation arising on the Lakes the relative priorities are determined not by the voyages, but by the seasons of navigation. For several months of the year navigation there is closed by ice, and the courts have settled upon the rule that claims furnished during one season rank those furnished during a previous season; and this rule is applied in New York harbor also as to boats which operate by seasons, like canal boats.[31]

[29] Escanaba (D. C.) 96 Fed. 252.

§ 184. [30] OMER, 2 Hughes, 96, Fed. Cas. No. 10,510; Porter v. Sea Witch, 3 Woods, 75, Fed. Cas. No. 11,289; John T. Williams (D. C.) 107 Fed. 750; Philomena (D. C.) 200 Fed. 873.

[31] CITY OF TAWAS (D. C.) 3 Fed. 170; Arcturus (D. C.) 18

For similar reasons a materialman's claim has been preferred to a prior towage claim.[36]

SAME—BETWEEN CONTRACT AND TORT LIENS

186. On this account a later contract lien may rank a prior tort lien.

An interesting illustration of this was the Jeremiah.[37] There salvors rescued a vessel which had been in collision, and was so hung to the other vessel that it required some force to get them apart. The court held, that the salvage claim had priority over the collision claim.

So, too, in the ALINE,[38] Dr. Lushington, while preferring, as we have heretofore seen, the tort claims to a prior bottomry bond, held also that a bottomry bond for supplies subsequently furnished ranked the tort claim, for the reason that the tort claim could only go against the vessel as it was at the time of the collision, and had no right to subject a subsequent increment to the vessel like this.

SAME—AS BETWEEN TORT LIENS

187. Among tort liens, the last should rank; but this is not settled.

An interesting case on this subject was the FRANK G. FOWLER.[39] In that case there were two successive collisions so close together that no question of laches could arise between the two. Under such circumstances District Judge Choate held that the last was entitled to priority, as

[36] Dan Brown, 9 Ben. 309, Fed. Cas. No. 3,556.

§ 186. [37] 10 Ben. 338, Fed. Cas. No. 7,290. So as to subsequent liens for necessaries. Glen Island (D. C.) 194 Fed. 744.

[38] 1 W. Rob. Ad. 112.

§ 187. [39] (D. C.) 8 Fed. 331; Id. (C. C.) 17 Fed. 653.

the first collision claim had a jus in re, or a proprietary interest, in the vessel, and therefore was somewhat in the position of an owner. In his opinion he says:

"A party who has already suffered such a damage has such a lien or hypothecation of the vessel. He is to that extent in the position of an owner—he has a quasi proprietary interest in the vessel. It is true, he cannot, as an owner, control her employment, or prevent her departure on another voyage, except by the exercise of his right or power to arrest her for the injury to himself; and in some cases the second injury may be done before he has an opportunity to arrest her. Yet, if her continued employment is not his own voluntary act, nor with his own consent, it is his misfortune that the vessel in which he has an interest is used in a manner to subject herself to all the perils of navigation. This use, unless he intervenes to libel and arrest her, is perfectly lawful as against him. If she is lost by shipwreck, of course his lien becomes valueless, and I think his interest is not exempted from this other peril to which the vessel is liable, namely, that she may become bound to any party injured through the torts of the master and mariners. The principle as to marine torts is that the ship is regarded as the offending party. She is liable in solido for the wrong done. The interests of all parties in her are equally bound by this lien or hypothecation, whether the master and mariners are their agents or not. In the case of the Aline, 1 W. Rob. Adm. 118, Dr. Lushington says: 'I am also of opinion that neither the mortgagee nor bottomry bondholder could be a competitor with the successful suitor in a cause of damage, and for this reason that the mortgage or bottomry bond might, and often does, extend to the whole value of the ship. If, therefore, the ship was not first liable for the damage she had occasioned, the person receiving the injury might be wholly without a remedy; more especially where, as in this case, the damage is done by a foreigner, and the only redress is by a proceed-

ing against the ship.' Commenting on this decision in the case of the Bold Buccleugh, ut supra, the court says: 'In that case there was a bottomry bond before and after the collision, and the court held that the claim for damage in a proceeding in rem must be preferred to the first bondholder, but was not entitled, against the second bondholder, to the increased value of the vessel by reason of repairs effected at his cost. The interest of the first bondholder taking effect from the period when his lien attached, he was, so to speak, a part owner in interest at the date of the collision, and the ship in which he or others were interested was liable to its value at that date for the injury done, without reference to his claim.' I think the same principle is applicable to a prior lienholder, who, by the tort of the master and mariners, had become, so to speak, a part owner in the vessel. His property—the vessel—though not by his own voluntary act, has been used in commerce. That use was not tortious as to him. It is subject in that use to all ordinary marine perils. One of those marine perils is that it may become liable to respond to another party injured by the negligence of the master and mariners. No exception to the liability of the vessel, exempting the interests of parties interested in the ship, has been established by authority."

On appeal to Circuit Judge Blatchford this decision was reversed, the judge holding that the doctrine of the last being paid first only applied to such liens as were for the benefit of the vessel, and tend to the preservation of the res, and did not apply to torts, which tend rather to destroy than to benefit.

If the principles laid down by the Supreme Court in the JOHN G. STEVENS are the guide, the District Judge was the one who should be followed. When we once settle the doctrine that a maritime lien is a jus in re, or a proprietary interest in the ship, it follows necessarily that the owner of that interest, though not guilty of laches, and having no control over the master in charge, impliedly takes the risks

of subsequent accidents, and holds the ship out to the world as a thing of life, liable to make contracts and to commit torts, and that he should not be heard to dispute the claims of others who have been brought into relations with her upon this basis.[40]

RELATIVE RANK AS AFFECTED BY SUIT OR DECREE

188. The earlier decisions held that among claims of otherwise equal dignity the party first libeling was entitled to be first paid, on the theory that an admiralty lien was a mere right of arrest; but the later decisions, establishing it as a proprietary right or interest in the thing itself, have deduced from that principle that a prior petens has no advantage, and that the institution of suit does not affect the relative rank of liens.[41]

In fact, in many districts, obtaining a decree does not give an inferior claim a priority which it would not otherwise have, but merely entitles the claimant to assert his claim without further proof, and debars others from contesting it on its merits, leaving open simply the question of priority.[42]

In England a lienor who secures an admiralty decree for his claim is held to have obtained the highest rank that the law can give, and to be entitled to priority over all others.[43]

This is a question largely affected by local practice and local rules. In many districts independent libels are filed

[40] America (D. C.) 168 Fed. 424.

§ 188. [41] CITY OF TAWAS (D. C.) 3 Fed. 170; J. W. Tucker (D. C.) 20 Fed. 129; Saylor v. Taylor, 77 Fed. 476, 23 C. C. A. 343.

[42] CITY OF TAWAS (D. C.) 3 Fed. 170; Aina (D. C.) 40 Fed. 269.

[43] Abbott's Law of Merchant Ships, pt. 6, c. 4, § 2; Bernard v. Hyne, 6 Moore, P. C. 56; 4 Notes of Cases, 498; 2 W. Rob. 451; 13 Eng. Rep. 604.

against the vessel. In some the vessel is arrested under the first libel, and the others come in by petition. In some districts, after a certain time all the claims are referred to a commissioner, to ascertain and report their relative rank. In others, in the event of no contest, a decree is entered at the return day, or as soon thereafter as possible, giving petitioners a judgment against the vessel, and directing a sale. It is impossible to lay down any rule on the subject.

In the Eastern district of Virginia the practice is that all claims filed up to the answer day are paid according to their relative character, it matters not which libels first. But all claims after the answer day, though otherwise prior in dignity, come in subject to those already filed. In that district the rule has been that claims coming in after a decree has been entered, and an order of sale made, are subject to the others, the reason being that the rules of that district allow nearly three weeks between the libel day and the answer day, which therefore give ample time for coming in, and it being further thought that bidders at the sale ought to know their relative rights in order to enable them to decide upon their bids. Those creditors who stay out until others more diligent than themselves bring suit, secure a sale, attend the sale, and make the vessel bring a good price, are not permitted to intervene then, and displace those who have borne the heat and burden of the fray.

In the absence of special equities, the rule of practice in the Eastern district of Virginia would certainly seem a fair one, well calculated to make vessels bring their full value, and to make marine claimants assert their claims seasonably, without allowing them to prejudice the rights of others.[44]

[44] See, also, Saracen, 2 W. Rob. Ad. 453; Bradley v. Corn Exchange, Inland Navigation & Fire Ins. Co., 5 Wall. 87, 18 L. Ed. 517; Dode (D. C.) 100 Fed. 478; James G. Swan (D. C.) 106 Fed. 94.

CHAPTER XVIII

A SUMMARY OF PLEADING AND PRACTICE

SIMPLICITY OF ADMIRALTY PROCEDURE

189. Admiralty procedure is like chancery pleading in simplicity and flexibility.

Admiralty pleading and practice are simple; more so even than proceedings in chancery, though governed largely by the liberal principles which prevail in that forum.[1]

§ 189. [1] Richmond v. New Bedford Copper Co., 2 Low. 315, Fed. Cas. No. 11,800; Toledo S. S. Co. v. Zenith Transp. Co., 184 Fed. 391, 106 C. C. A. 501; U. S. v. Cornell Steamboat Co., 202 U. S. 184, 26 Sup. Ct. 648, 50 L. Ed. 987.

By this it is not meant that an admiralty court has any chancery jurisdiction. It has no jurisdiction, for instance, of matters of account, except incidentally, where an account is necessarily involved in exercising jurisdiction conferred on some other ground.[2]

Nor has it jurisdiction of controversies arising from titles merely equitable.[3]

190. PROCEEDINGS IN REM AND IN PERSONAM

Admiralty proceedings fall under two great classes—proceedings in rem and proceedings in personam. In the first, the thing itself against which the right is claimed or liability asserted is proceeded against by name, as a contracting or offending entity, arrested or taken into legal custody, and finally sold to answer the demand, unless its owner appears and releases it by bond or stipulation.

A proceeding in personam is an ordinary suit in admiralty against an individual. The process upon it is a monition, which substantially corresponds to an ordinary summons in a common-law suit, or it may be accompanied in proper cases by a process of foreign attachment, or it may also have a warrant of arrest of the person in cases where the state law permits an arrest.[4]

The distinction between a proceeding against the res itself to enforce its own obligation and a proceeding against the owner to enforce his own obligation, whether connected with the res or not, and whether accompanied by an attachment as incidental to the owner's liability or not is vital.[5]

Whether to proceed in rem or in personam in a given case

[2] Grant v. Poillon, 20 How. 162, 15 L. Ed. 871; H. E. Willard (C. C.) 52 Fed. 387.

[3] ECLIPSE, 135 U. S. 599, 10 Sup. Ct. 873, 34 L. Ed. 269.

§ 190. [4] Admiralty rule 48 (29 Sup. Ct. xliv); Atkins v. Fiber Disintegrating Co., 18 Wall. 272, 21 L. Ed. 841.

[5] Knapp Stout & Co. Co. v. McCaffrey, 177 U. S. 638, 20 Sup. Ct. 825, 44 L. Ed. 921.

is rather a question of substantive law than of practice. It depends on the question whether there is an admiralty lien, and the discussion under the previous subjects of these lectures must be adverted to in order to decide it. Admiralty rules 12–20 contain provisions when the suit may be in rem, when in personam, and when in both. But they are not intended to be exclusive, or to say that in cases not covered by their terms there shall be no remedy, whether in either form or in both combined.[6]

"Proceedings in Rem Bind the World"

It is a maxim of the law that proceedings in rem bind the world. In such proceedings no notice is served on the owner. It is presumed that a seizure of his property will soon come to his knowledge, and cause him to take steps to defend it; and when he appears for that purpose he comes in rather as claimant or intervenor than as defendant. Hence, if he does not appear, the judgment binds only the property seized, and, if it does not satisfy the claim, no personal judgment can be given against him for the deficiency. In ordinary suits of foreign attachment in the state courts, the debtor is defendant by name, and, if he appears, a personal judgment may be rendered against him; but not so in admiralty suits in rem, for the real defendant there is the vessel or other property, and the owner appears not as defendant, but as claimant.[7]

It follows from this principle that when an owner comes in for the purpose of protecting his interest in the res, he does not submit himself generally to the jurisdiction of the court so as to permit a judgment in personam against him for any deficit. This springs logically from the doc-

[6] CORSAIR, 145 U. S. 335, 12 Sup. Ct. 949, 36 L. Ed. 727; Thomas P. Sheldon (D. C.) 113 Fed. 779; Samson (D. C.) 197 Fed. 1017.

[7] Cooper v. Reynolds, 10 Wall. 308, 19 L. Ed. 931; O'Brien v. Stephens, 11 Grat. (Va.) 610; Davis, 10 Wall. 15, 19 L. Ed. 875; Pleroma (D. C.) 175 Fed. 639.

trine applied in America that the res is the real contractor or offender, and that the owner's interest is incidental.[8]

Herein is a sharp distinction between the American and English law. In England a respondent is really a defendant, and judgment goes against him for any deficiency.[9]

This was because the procedure in rem in England was in its origin not based on any theory of direct responsibility attaching to the res, but as a means of compelling the owner's appearance. Their process to this day, though naming the ship and not the owners in terms, commands them to enter an appearance, and the arrest of the ship follows as an incident.[10]

When the maxim says that a proceeding in rem binds the world, it means that all having any interest in the res have constructive notice of its seizure, and must appear and protect their interest. Hence, as every obligation implies a correlative right, no one is bound to appear whose interest is of a character which does not permit him to appear; and such are not bound by the proceeding, except in so far

[8] Monte A. (D. C.) 12 Fed. 331; Ethel, 66 Fed. 340, 13 C. C. A. 504; Lowlands (D. C.) 147 Fed. 986; Nora (D. C.) 181 Fed. 845. In the Minnetonka, 146 Fed. 509, 515, 77 C. C. A. 217, is a holding that a personal decree can be rendered against the claimant. It was a suit which might have been brought originally in rem and in personam, though it was apparently in rem. Hence an amendment adding the proceeding in personam and directing the issue of new process thereon would have been clearly allowable. But how this could have been done without such an amendment, or how it can be done in cases where the procedure could not have been in rem and in personam at the outset, is beyond the author's comprehension. CORSAIR, 145 U. S. 335, 12 Sup. Ct. 949, 36 L. Ed. 727.

[9] Gemma, [1899] P. 285; Dupleix, [1912] P. 8.

[10] 2 Select Anglo-American Legal Essays (Mears' Essay) 345. In Mayer's Admiralty Law & Practice, 9 et seq., and also 26 et seq., is a thorough discussion of the difference between the English and American doctrine, and the reason therefor. In the appendix to Smith's Admiralty Law and Practice is a full collection of the English forms.

as they may be bound through their vendors or other parties in privity.[11]

191. THE ADMIRALTY RULES OF PRACTICE

In 1842 Congress passed an act directing the Supreme Court to prepare and promulgate rules to govern the procedure and practice in admiralty. In pursuance of this statute, the court promulgated the rules to regulate the admiralty practice in the inferior courts now known and cited as the "Admiralty Rules." They form an admirably simple and harmonious system, and have worked so well that they are to-day practically in the form of the original draft, the only material change being the addition of a few to regulate limited liability proceedings, and one to authorize bringing in the other vessel where only one of two colliding vessels is libeled.

An admiralty court is not a court of terms, but is always open for the transaction of business.

192. THE LIBEL

The first step in an admiralty suit is to file the libel. This is the written statement of the cause of action, corresponding to the declaration at common law and the bill in equity. It must be properly entitled of the court; addressed to the judge; must state the nature of the cause; that the property is within the district, if in rem, or the parties, their occupation and residence, if in personam; must then state the facts of the special case in separate articles clearly and concisely, and conclude with a prayer for process and a prayer for general relief. It may propound interrogatories to the adversary.[12]

[11] ECLIPSE, 135 U. S. 599, 10 Sup. Ct. 873, 34 L. Ed. 269; Cushing v. Laird, 107 U. S. 69, 2 Sup. Ct. 196, 27 L. Ed. 391.

§ 192. [12] Admiralty rule 23 (29 Sup. Ct. xli).

The libel should be in the name of the real party in interest, not in the name of one for the benefit of another. But the better opinion is that it may be amended by inserting the names of the real parties, or that, if they come in by supplemental libel, the proceedings will thereby be made regular.[13]

This principle does not prevent suits in a representative capacity. For instance, the master has wide powers as agent of all concerned, and may sue on behalf of owners of ship and cargo, and frequently on behalf of the crew.[14]

All parties entitled to similar relief on the same state of facts may join as libelants, in order to avoid multiplicity of suits. And for the same reason distinct causes of action may be joined in one libel. The practice in this respect is very liberal.[15]

In stating the facts of the special case, useless verbiage and archaic terms, may safely be omitted. The narration may be made as simple as possible, provided, always, that those essentials common to any civilized system of pleading be observed—to state the case with sufficient detail to notify the adversary of the grounds of attack, so that he may concert his defense. For instance, a libel in a collision case must specify the acts of negligence committed by the other vessel, though, if it does not do so, but merely charges neg-

[13] Ilos, Swab. 100; Minna, L. R. 2 Ad. & Ec. 97; Fretz v. Bull, 12 How. 466, 13 L. Ed. 1068; Burke v. M. P. Rich, Fed. Cas. No. 2,161; Anchoria (D. C.) 9 Fed. 840; Beaconsfield, 158 U. S. 303, 15 Sup. Ct. 860, 39 L. Ed. 993; Eastfield S. S. Co. v. McKeon (D. C.) 186 Fed. 357 (reversed on another point 201 Fed. 465, 120 C. C. A. 249; the court however stating—page 470—that it concurred with the District Court on this point).

[14] Commander in Chief, 1 Wall. 51, 17 L. Ed. 609; Blackwall, 10 Wall. 1, 19 L. Ed. 870; Mercedes (D. C.) 108 Fed. 559.

[15] Queen of the Pacific (D. C.) 61 Fed. 213; Pacific Coast S. S. Co. v. Bancroft-Whitney Co., 94 Fed. 180, 36 C. C. A. 135, reversed Queen of the Pacific, 180 U. S. 49, 21 Sup. Ct. 278, 45 L. Ed. 419, but not on this question; Oregon, 133 Fed. 609, 68 C. C. A. 603.

ligence in general, and no exceptions are filed, it will not prevent the case from proceeding.[16]

193. AMENDMENTS

In case the libel is thought defective, great latitude is allowed in amendments. Formal amendments are a matter of course, and amendments in matters of substance are in the discretion of the court. They may be made even on appeal, but not to the extent of introducing a new subject of litigation.[17]

But the power of the court to allow amendments is a judicial discretion, not a mere caprice. It will not be so exercised as, under the guise of liberality to one party, to do injustice to the other. Hence, after the cause is at issue, and evidence has been taken, or the witnesses scattered, a court would be chary in allowing amendments, especially of matters known to the applicant for any length of time before the application is made.

"The propriety of granting this privilege in any particular case will depend on the circumstances by which it is attended. The application is addressed to the sound discretion of the court, and this discretion is to be exercised with a just regard to the rights and interests of both parties; care being taken that for the sake of relieving one party injustice shall not be done to the other." [18]

[16] MARPESIA, L. R. 4 P. C. 212; Vim (D. C.) 2 Fed. 874; H. P. Baldwin, 2 Abb. U. S. 257, Fed. Cas. No. 6,811; Barber v. Lockwood (D. C.) 134 Fed. 985.

§ 193. [17] Admiralty rule 24 (29 Sup. Ct. xli); Graham v. Oregon R. & Nav. Co. (D. C.) 134 Fed. 692; Indiana Transp. Co., Ex parte, 244 U. S. 456, 37 Sup. Ct. 717, 61 L. Ed. 1253 (a case growing out of the Eastland disaster, and emphasizing the principle that an appearance to defend does not constitute a submission to jurisdiction for all purposes).

[18] 2 Conk. Adm. 258. As examples of the limit put upon this power of amendments, see Keystone (D. C.) 31 Fed. at page 416; Thom-

194. THE PROCESS

On filing the libel in rem an order for process is filed. It recites, "On reading the libel, and otherwise complying with the rules of court, let process issue."

Thereupon the process of arrest issues. It is directed to the marshal, and instructs him to seize the vessel, and give notice to all interested that on a certain day, fixed by the rules of each district, the case will come on for hearing, when and where they are cited to appear, and interpose their claims, and to return his action thereunder to the court.

"Arrest" is nothing more than the term applied in admiralty parlance to a seizure of the res.[19]

The time fixed for hearing and set out in the warrant of arrest varies with the rules in different districts. It is usually about two weeks off, for the merit of admiralty proceedings is their rapidity.

In the Eastern district of Virginia the return day is Tuesday of the week next after filing the libel, and the hearing day is ten days after that, which makes it always fall on Friday.

The warrant of arrest is signed by the clerk, and under the court seal. The marshal, on receiving it, makes out three notices, signed by himself, reciting that by virtue of the warrant he has seized the said vessel, and has her in his custody, and that all persons are cited to appear on the hearing day, and show cause why a final decree should not pass as prayed. He takes the warrant of arrest and one of these proclamations, and starts out on a quest for his prey.

as Melville (D. C.) 31 Fed. 486; McKinlay v. Morrish, 21 How. 347, 16 L. Ed. 100; Lamb v. Parkman, 1 Spr. 343, Fed. Cas. No. 8,020; Coffin v. Jenkins, 3 Story, 108, Fed. Cas. No. 2,948; Philadelphian, 60 Fed. 423, 9 C. C. A. 54; O'Brien v. Miller, 168 U. S. 287, 18 Sup. Ct. 140, 42 L. Ed. 469; Circassian, 2 Ben. 171, Fed. Cas. No. 2,723.

§ 194. [19] Pelham v. Rose, 9 Wall. 103, 19 L. Ed. 602.

On finding her, he reads the warrant of arrest to the captain or other person in charge, and he pastes a copy of his proclamation on a conspicuous part of the vessel. Then he returns to the court-room door, and pastes another there. And then, by way of making it more widely known, he goes to the newspaper designated by court rule, and publishes a notice in substantially the same form. Meanwhile a ship keeper is in charge of the ship.

The marshal cannot serve process upon a ship in custody of an officer of a state court. Such an officer cannot sell the title clear of maritime liens, and so the admiralty claimant must wait till the other court lets go. As soon as its custody ends, the admiralty claimant may proceed against it, even in the hands of the state court purchaser.[20]

A vessel owned or in use by a Government is not subject to process.[21]

If the vessel owner wants possession of his ship, he is allowed, by section 941, Rev. St. (U. S. Comp. St. § 1567), to come in, give bond or stipulation in double the amount of libelant's claim, and release her. This is a substitute for the vessel, and no suit is necessary upon it, but judgment may be given against the obligors on it in the final decree.[22]

This bond or stipulation is so far a substitute for the vessel that it discharges the claim against her which is being asserted in the libel, and she cannot be re-arrested for the same cause of action, unless there have been circumstances of fraud or misrepresentation in giving it, or unless

[20] TAYLOR v. CARRYL, 20 How. 583, 15 L. Ed. 1028; Moran v. Sturges, 154 U. S. 256, 14 Sup. Ct. 1019, 38 L. Ed 981; Resolute, 168 U. S. 437, 18 Sup. Ct. 112, 42 L. Ed. 533.

[21] Siren, 7 Wall. 152, 19 L. Ed. 129; G. A. Flagg (D. C.) 256 Fed. 852; Broadmayne, [1916] P. 64; 32 T. L. R. 304; Porto Alexandre, 36 T. L. R. 28, 66. Since the text was written Congress has passed the act of March 9, 1920, authorizing suits against the United States. The act will be found in the Appendix, p. 506.

[22] See post, p. 497.

it was a case in which such an undertaking could not legally be given.[23]

On the theory that a bona fide effort to assert one's rights should not involve any unpleasant aftermath, a libelant who fails in his suit is not liable for his unsuccessful arrest of defendant's property, unless his action was malicious.[24]

195. DECREES BY DEFAULT

If, on the hearing day, no defense has been interposed, then, under the provisions of admiralty rule 29, all persons are deemed in contumacy and default, the libel is taken for confessed, and the court hears the cause ex parte. In such case no proof is necessary, except as to damages, if unliquidated, and the only hearing is the presentation of a decree to the judge.[25]

In other words, a decree by default in admiralty resembles office judgments or writs of inquiry at common law, or a bill taken for confessed in equity.[26]

In case of such default the court may at any time within ten days, for cause shown, reopen the decree, and permit defense. But in default decrees this power is limited

[23] Roberts v. The Huntsville, Fed. Cas. No. 11,904; Union, Fed. Cas. No. 14,346; White Squall, Fed. Cas. No. 17,570; Wm. F. McRae (D. C.) 23 Fed. 558; Monarch (D. C.) 30 Fed. 283; Mutual (D. C.) 78 Fed. 144; Cleveland (D. C.) 98 Fed. 631. The I. F. Chapman, 241 Fed. 836, 154 C. C. A. 538, is, in the author's judgment, contrary to the weight of authority, and sustainable, if at all, only under its peculiar facts.

[24] Alcalde (D. C.) 132 Fed. 576; Admiral Cecille (D. C.) 134 Fed. 673; Watt v. Cargo of Lumber, 161 Fed. 104, 88 C. C. A. 268.

§ 195. [25] Cape Fear Towing & Transp. Co. v. Pearsall, 90 Fed. 435, 33 C. C. A. 161.

[26] Miller v. U. S., 11 Wall. 294, 20 L. Ed. 135; United States v. Mollie, 2 Woods, 318, Fed. Cas. No. 15,795; Water Witch (C. C.) 44 Fed. 95; Thomson v. Wooster, 114 U. S. 104, 5 Sup. Ct. 788, 29 L. Ed. 105; Cape Fear Towing & Transp. Co. v. Pearsall, 90 Fed. 435, 33 C. C. A. 161.

to ten days. On the lapse of that time the decree becomes as final as a court judgment after the adjournment of the term.[27]

There is some conflict of authority whether there is such a thing known to the admiralty law as a libel of review. The better opinion seems to be that there is; but it is a power reluctantly exercised, and lies only for errors apparent on the face of the record, or for fraud. It does not lie to enable a party to set up facts or defenses which his own carelessness overlooked.[28]

196. THE DEFENSE

If the defendant does not wish to let his case go by default, he raises any legal points apparent on the libel by exception, which corresponds to a demurrer,[29] and he sets up defenses of fact by answer. This must be on oath or affirmation, and must be full and explicit to each article of the libel, and it may propound interrogatories to the libelant.[30]

If it is not sufficiently full, the libelant may except.

An answer in admiralty has only the effect of a denial. Unlike an answer in chancery, it is not evidence in favor of respondent.[31]

[27] Admiralty rule 40 (29 Sup. Ct. xliii); SNOW v. EDWARDS, 2 Low. 273, Fed. Cas. No. 13,145; Illinois, 5 Blatchf. 256, Fed. Cas. No. 7,002; Northrop v. Gregory, 2 Abb. U. S. 503, Fed. Cas. No. 10,327.

[28] NEW ENGLAND, 3 Sumn. 495, Fed. Cas. No. 10,151; Northwestern Car Co. v. Hopkins, 4 Biss. 51, Fed. Cas. No. 10,334; Dexter v. Arnold, 3 Mason, 284, Fed. Cas. No. 3,855; Columbia (D. C.) 100 Fed. 890; New York, 113 Fed. 810, 51 C. C. A. 482; Hall v. Chisholm, 117 Fed. 807, 55 C. C. A. 31.

§ 196. [29] White v. Cynthia, Fed. Cas. No. 17,546a.

[30] Admiralty rule 27 (29 Sup. Ct. xlii).

[31] Cushman v. Ryan, 1 Story, 91, Fed. Cas. No. 3,515; Eads v. The H. D. Bacon, Newb. Adm. 274, Fed. Cas. No. 4,232.

Things neither admitted nor denied by the answer are not taken as true, but must be proved.[32]

The defendant, in his answer, may set up want of jurisdiction of the subject-matter and a defense on the merits.[33]

Of course, he cannot plead mere want of jurisdiction over the person, and defend on the merits, as that would be a general appearance in any system of pleading.[34]

Hence, when the facts showing lack of jurisdiction over the person or exemption from suit do not appear on the libel, such defense must be set up by exception, which corresponds more to a dilatory plea than to a demurrer, as it sets up additional facts.[35]

The answer, if sufficient, or if not excepted to, puts the case at issue. No replication is necessary.[36]

197. THE TRIAL

As admiralty is not a court of terms, the case goes at once on the trial calendar, and may be called up at any time convenient.

It is tried before the judge (there are no juries in admiralty proceedings proper), who hears the witnesses ore tenus, or, if he sees fit, appoints a commissioner to take the evidence down in writing, and report it to him later. In this matter the practice varies in the different districts. In the Eastern district of Virginia the rule requires that in cases involving over $500 the evidence shall be ore tenus, and taken down in shorthand; and the stenographer's notes, when written out, constitute the record in the event of an appeal.

[32] Clarke v. Dodge Healy, 4 Wash. C. C. 651, Fed. Cas. No. 2,849.

[33] Lindrup (D. C.) 62 Fed. 851.

[34] Jones v. Andrews, 10 Wall. 329, 19 L. Ed. 935.

[35] August Belmont (D. C.) 153 Fed. 639; Koenigin Luise (D. C.) 184 Fed. 170, 172.

[36] Admiralty rule 51 (29 Sup. Ct. xliv).

A similar practice is prevalent in the other jurisdictions.[37]

On account of the shifting character of marine witnesses, the cases are rare where all the evidence can be offered in court. In order to save the testimony of departing witnesses, or secure the testimony of nonresidents, it is usually necessary to take many depositions de bene esse. They are taken on notice, pursuant to the provisions of section 863, Rev. St. (U. S. Comp. St. § 1472), or the act of March 9, 1892, permitting them to be taken as in the state courts.[38]

In practice, counsel are liberal with each other in such matters, accepting short notice, allowing the evidence to be taken in shorthand, waiving the witnesses' signatures, and even the filing of the deposition till the hearing.

When the case comes on, it is heard and argued substantially as a chancery cause would be.

If the damages are not known or agreed to, the judge, in the event of a decision for libelant, usually refers the matter to a commissioner by an interlocutory decree to inquire into and assess the damages. Under admiralty rule 44 this commissioner has about the powers of a master in chancery. Those dissatisfied with his report may except to it, and upon it and such exceptions the court renders its final decree.

198. EVIDENCE

Section 858 of the Revised Statutes, as amended June 29, 1906, provides that the competency of a witness to testify in any civil action, suit or proceeding in the courts of the United States shall be determined by the laws of the state or territory in which the court is held.[39]

§ 197. [37] Neilson v. Coal, Cement & Supply Co., 122 Fed. 617, 60 C. C. A. 175; Rogers v. Brown (D. C.) 136 Fed. 813.

[38] 27 Stat. 7 (U. S. Comp. St. § 1476).

§ 198. [39] U. S. Comp. St. § 1464. For the statutes regulating evidence, see post, p. 498. See, also, Hughes on Federal Procedure, 10.

199. ATTACHMENTS IN ADMIRALTY

It has been settled that the common-law and chancery courts of the United States have no jurisdiction of suits by foreign attachment against nonresidents, for the reason that by the federal statutes no person can be sued, as a general rule except in the district where he lives.[40]

Since the last-cited decision, however, the Tucker-Culbertson Act allows suits to be brought in the district of the plaintiff's residence, so that a process of foreign attachment could be sustained in such district if the defendant can be served with process.

In admiralty, however, a libel accompanied by an attachment can be sustained, as these statutes do not apply to the admiralty courts.[41]

200. SET-OFF

Set-off cannot be pleaded in admiralty as it is the creature of statutes which were passed for the common-law and chancery courts, and were not intended to apply to the admiralty courts.[42]

This, however, does not prevent a counterclaim arising out of the same transaction from being used to recoup the damages.[43]

§ 199. [40] Ex parte Des Moines & M. R. Co., 103 U. S. 794, 26 L. Ed. 461.

[41] IN RE LOUISVILLE UNDERWRITERS, 134 U. S. 488, 10 Sup. Ct. 587, 33 L. Ed. 991; Reilly v. Philadelphia & R. R. Co. (D. C.) 109 Fed. 349.

§ 200. [42] Willard v. Dorr, 3 Mason, 91, Fed. Cas. No. 17,679; O'Brien v. 1,614 Bags of Guano (D. C.) 48 Fed. 726.

[43] Bowker v. U. S., 186 U. S. 135, 22 Sup. Ct. 802, 46 L. Ed. 1090; Howard v. 9,889 Bags of Malt (D. C.) 255 Fed. 917.

201. LIMITATIONS

Admiralty is not bound by the statutes of limitation, for this same reason that they do not in terms apply to those courts. Hence, where the rights of third parties have intervened, an admiralty court will hold a claim stale in a much shorter period than that prescribed by the statutes, and we have seen in other connections that among admiralty liens of the same character the last is preferred to the first.[44]

But, as between the original parties, unless special circumstances have intervened, the admiralty courts adopt the statutes of limitation by analogy, the doctrine being substantially the same as the chancery doctrine on the subject.[45]

202. TENDER

In the matter of tender, admiralty is not as rigid as the other courts. A formal offer in actual cash is not de rigueur. Any offer to pay, followed up by a deposit of the amount admitted in the registry of the court, is sufficient.[46]

§ 201. [44] Ante, pp. 105, 115, 392; Nikita, 62 Fed. 936, 10 C. C. A. 674.

[45] Sarah Ann, 2 Sumn. 206, Fed. Cas. No. 12,342; Queen (D. C.) 78 Fed. 155; Pacific Coast S. S. Co. v. Bancroft-Whitney Co., 94 Fed. 180, 36 C. C. A. 135; Queen of the Pacific, 180 U. S. 49, 21 Sup. Ct. 278, 45 L. Ed. 419; Southard v. Brady (C. C.) 36 Fed. 560; Southwark (D. C.) 128 Fed. 149; Davis v. Smokeless Fuel Co., 196 Fed. 753, 116 C. C. A. 381.

§ 202. [46] Dedekam v. Vose, Fed. Cas. No. 3,729; Boulton v. Moore (C. C.) 14 Fed. 922.

203. COSTS

In the matter of costs admiralty courts exercise a wide discretion, and often withhold them as a punishment in case the successful litigant has been guilty of oppression, or has put his opponent, by exorbitant demands, to unnecessary inconvenience or expense.[47]

The act of July 20, 1892, as amended June 25, 1910,[48] permits suits in forma pauperis without requiring security for costs. The act, if intended to apply to the admiralty courts, frequently works great injustice by tying up large steamers in foreign ports till they give bond; and they are remediless if the cause of action is unfounded.

204. ENFORCING DECREES

If, after the trial and all its incidents are over, the decision is in favor of libelant, and there is no appeal, the final decree, in case the vessel has been released, goes against the stipulators, and under admiralty rule 21 can be enforced by a writ of fieri facias.

In case the vessel has not been released, the final decree provides that she be advertised and sold by the marshal of the district, who alone, under admiralty rule 41, can perform this duty.[49] The practice is to make the sale for cash, and the rule requires it to be deposited in the registry of the court, to await its further orders.

A sale by the marshal vests a clear title against the world.[50]

§ 203. [47] Shaw v. Thompson, Olcott, 144, Fed. Cas. No. 12,726; Lyra (C. C. A.) 255 Fed. 667.

[48] 27 Stat. 252; 36 Stat. 866 (U. S. Comp. St. § 1626); post, p. 505.

§ 204. [49] Lambert's Point Towboat Co. v. U. S., 182 Fed. 388, 104 C. C. A. 598.

[50] Trenton (D. C.) 4 Fed. 657; Evangel (D. C.) 94 Fed. 680.

Admiralty rule 42 requires money in the registry of the court to be drawn out by checks signed by the judge.

Under rule 43, parties having any interest in the vessel may come in by petition, and assert it. Under this, a party holding any sort of lien may come in, but not any party having a mere personal claim upon the owner.[51]

205. THE FIFTY-NINTH RULE

This rule [52] permits the owner of one of two vessels which has been libeled in a collision case by a third party to bring in the other vessel if he can find her, and have the damages assessed against either or both, according to the fact.[53]

The principle of this rule has been applied to many analogous cases, in the effort to place the responsibility where it equitably belongs.[54]

206. THE COURTS HAVING ADMIRALTY JURISDICTION

The federal Constitution vests the judicial power in one Supreme Court and such inferior courts as Congress shall from time to time establish. Acting under this authority, Congress, by the Judiciary Act of 1789, divided the United States into districts, and established in each district two

[51] Edith, 94 U. S. 518, 24 L. Ed. 167; Leland v. Medora, 2 Woodb. & M. 92, Fed. Cas. No. 8,237; Brackett v. Hercules, Gilp. 184, Fed. Cas. No. 1,762.

§ 205. [52] Admiralty rule 59 (29 Sup. Ct. xlvi).

[53] Ante, p. 320; Hudson, Fed. Cas. No. 6,828; Joice v. Canal Boats Nos. 1,758 and 1,892 (D. C.) 32 Fed. 553; Greenville (D. C.) 58 Fed. 805.

[54] Dailey v. New York (D. C.) 119 Fed. 1005; Crown of Castile (D. C.) 148 Fed. 1012; Evans v. New York & P. S. S. Co. (D. C.) 163 Fed. 405; Daylight (D. C.) 206 Fed. 864; Barnstable, 181 U. S. 464, 21 Sup. Ct. 684, 45 L. Ed. 954.

courts of original jurisdiction, the District Court and the Circuit Court. To the District Court all classes of peculiar or special character were assigned, such as suits for penalties, admiralty, and bankruptcy cases, and minor criminal cases. On the Circuit Court was conferred the general current litigation usual between man and man, including all cases of common law and equity, and more important criminal cases. The Circuit Court was also given appellate jurisdiction of most of the subjects of District Court cognizance, including admiralty cases.

There was a District Judge appointed for each district, who was empowered to hold both the District and Circuit Courts for that district, except that he could not sit in the Circuit Court on appeals from his own decisions. To provide an appellate judge for such cases, the districts were grouped into larger units, called "circuits," equal in number to the justices of the Supreme Court, and each Justice, during the recess of that court, went around his circuit, holding the Circuit Court in each district.

Thus appeals from the District Courts in admiralty were tried in the Circuit Court by the Supreme Court Justice for that circuit. The appeal took up questions both of law and fact for review, the notes of evidence taken by the District Judge being the evidence on appeal; but the trial was de novo, being rather a new trial than an appeal, and new evidence could be introduced in the appellate court. In the event of an adverse decision in the Circuit Court, there was a second appeal, both on law and fact, to the Supreme Court, in cases involving over $2,000.

The increase of litigation consequent on the Civil War was so great that it was found necessary to increase the judicial force, and lighten the labors of the Supreme Court justices. Hence, in 1869, Congress enacted that there should be an additional judge appointed for each judicial circuit, to be called a "Circuit Judge." He could hold the Circuit Court in any district of his circuit.

The docket of the Supreme Court became more and more congested, and further relief became imperative. And so, by the act of February 16, 1875, Congress raised the limit of appeals to the Supreme Court to $5,000, and further provided that in admiralty there should no longer be an appeal to that court on questions both of law and fact, but that the Circuit Judge on an admiralty appeal from the district court should make a finding of the facts, and draw his conclusions of law therefrom, and the case then went to the Supreme Court simply on this finding, and no longer on all questions, both of law and fact. This, however, still left the litigant one appeal on questions of fact—that from the District Court to the Circuit Court.

This continued to be the law until the act of March 3, 1891, known as the "Appellate Courts Act." It created an additional Circuit Judge for each circuit, abolished the appellate jurisdiction of the Circuit Court, and established a new appellate court in each circuit, composed of the Circuit Justice and the two Circuit Judges, but with the District Judges used to fill vacancies. Under this law admiralty appeals from the District Court go to this appellate court, with no restriction as to the amount involved, and on the full record of the District Court, thereby nominally giving a review of questions both of law and fact. This new appellate court is the court of last resort in admiralty cases, except that it may certify to the Supreme Court for decision any questions as to which it may desire instruction, and except, also, that the Supreme Court may, by certiorari, bring up for review any cases that it may deem of sufficient importance.

The Circuit Court, having lost its appellate jurisdiction by the Appellate Courts Act of 1891, was finally abolished, and its original jurisdiction transferred to the District Court, by the act of March 3, 1911, known by the short title of the "Judicial Code," but this is immaterial to the pres-

ent subject, as the Circuit Court had no original jurisdiction in admiralty.[55]

207. THE PROCESS OF APPEAL

The process of appeal varies in the different circuits under their different rules. In the Fourth circuit, as soon as the final decree is entered in the District Court, a petition is filed in that court, addressed to the judges of the Circuit Court of Appeals, praying an appeal, and assigning errors. On this the District Judge (or any judge of the appellate court) indorses: "Appeal allowed. Bond required in the penalty of $———, conditioned according to law"—and signs it. He also signs the citation, which is the notice of appeal given to the other side, and cites him to appear in the appellate court at a day named to defend his decree. A certified copy of the entire transcript is then obtained from the district clerk, and filed with the clerk of the appellate court, who dockets the case, and, when secured as to costs, has the record printed.

Under the act of February 13, 1911, the appellant is allowed to print his own record, instead of securing a transcript from the clerk of the trial court and then having it printed by the clerk of the appellate court.[56]

The act of March 3, 1891, provides that the appeal must be taken within six months from the decree complained of, "unless a lesser time is now allowed by law." Appeals in admiralty cases are governed by the six months limitation, and are unaffected by the clause above quoted.[57]

§ 206. [55] 36 Stat. 1087 (U. S. Comp. St. §§ 968–1274).

§ 207. [56] 36 Stat. 901 (U. S. Comp. St. §§ 1656, 1657).

[57] New York, 44 C. C. A. 38, 104 Fed. 561; Robins Dry Dock & Repair Co. v. Chesbrough, 216 Fed. 121, 132 C. C. A. 365.

208. QUESTIONS OF FACT ON APPEAL

Although the intent of Congress to give an appeal on questions both of law and fact is clear, and it is notorious that the act of February 16, 1875, while it was in force, was far from satisfactory, this has been largely frittered away by judicial decisions. The appellate courts have gone very far in practically refusing to review questions of fact where the District Judge has had the witnesses before him, though not so far where part or all of the evidence has been by deposition. This doctrine is largely an abdication of the trust confided in them, and, for an admiralty court, smacks too much of the old common-law fiction as to the sacredness of the jury's verdict. Under the old law giving a review on questions of law and fact the Supreme Court has more than once spoken of a right of appeal as something more than a shadow.[58]

A finding, unsupported by any evidence or ignoring material and proven facts, will be disregarded.[59]

In fact, this theory about the trial judge being endowed with clairvoyance because he saw the witnesses has degenerated into a mere makeweight for that filius nullius, the per curiam opinion.

The judicial ermine, unlike the mantle of Elijah, confers no supernatural powers. The most truthful men often make the worst witnesses. If the trial judge could decide

§ 208. [58] Post v. Jones, 19 How. 150, 15 L. Ed. 618; ARIADNE, 13 Wall. 475, 20 L. Ed. 542; City of Hartford, 97 U. S. 323, 24 L. Ed. 930; Gypsum Prince, 67 Fed. 612, 14 C. C. A. 573; Glendale, 81 Fed. 633, 26 C. C. A. 500; Albany, 81 Fed. 966, 27 C. C. A. 28; Captain Weber, 89 Fed. 957, 32 C. C. A. 452; Lazarus v. Barber, 136 Fed. 534, 69 C. C. A. 310; Kia Ora, 252 Fed. 507, 164 C. C. A. 423.

[59] Darlington v. Turner, 202 U. S. 195, 26 Sup. Ct. 630, 50 L. Ed. 992; Fullerton, 211 Fed. 833, 128 C. C. A. 359.

cases at their close, as juries render verdicts, there would be more force in the idea. But in districts of crowded dockets, where numerous cases, each with numerous witnesses, are tried in rapid succession, and then taken under advisement for months, nothing short of a moving picture screen, with a photographic-phonographic attachment, could bring it back to the judicial mind. To give this amiable fiction the scope which it has often been given is in effect to deny an appeal on questions of fact, which the statutes are supposed to give. That seeing the witnesses is an advantage cannot be denied. But its importance has been grossly exaggerated. Surely the combined intelligence of the three appellate judges as against the one trial judge ought to overbalance it.

209. NEW EVIDENCE

A peculiar feature of admiralty appeals formerly was that an admiralty appeal was a new trial. An appeal from the district to the circuit court was like one from a magistrate in the state procedure—new witnesses could be examined, and the circuit court entered its own decree, and issued its own execution, instead of remanding the case to the district court for future proceedings.

Even an appeal from the Circuit to the Supreme Court was so far a new trial that additional witnesses could be examined, but the Supreme Court restricted this right by rule to evidence which could not have been produced in the lower courts, and required it to be taken by deposition. In other words, they discouraged the practice as much as possible on account of its obvious injustice and liability to abuse.[60]

The new appellate courts have adopted substantially the same doctrine. In case an appeal is taken up with a record

§ 209. [60] Mabey, 10 Wall. 419, 19 L. Ed. 963.

not containing the evidence, they will not review the facts at all.[61]

It is still a new trial in its effect on the decree of the trial court—so far in fact that the appellate court can consider changes in fact and law arising after the decree.[62]

In the Glide,[63] a case was tried in the District Court of Maryland, the witnesses being examined ore tenus, but there was no rule in that district requiring their testimony to be taken down, and it was not taken down. The unsuccessful party appealed, and asked for a commission to retake his testimony for use on appeal. The court permitted it, on the ground that it was not his fault if the district court rule did not provide for such a case. The court, after arguing out his right to retake his testimony, ended its opinion by saying that the case must not be taken as a precedent, and any party who omitted or neglected to have his testimony taken down must suffer the consequences. So it sounds very much like a verdict of "Not guilty, but don't do it again."

The fact that there was no rule requiring it was not much of an excuse. In the common-law courts there is no rule or statute requiring evidence to be preserved for the purpose of preparing bills of exceptions, but the lawyer who gave that as an excuse for not setting out the evidence in his bill would receive scant consideration from a judge.

The well-known characteristics of sailor witnesses, and the utter lack of any check on them in case their testimony is not in black and white, especially after they have found out by hearing the arguments in the first trial how their

[61] Philadelphian, 60 Fed. 423, 9 C. C. A. 54.

[62] Hawkins, In re, 147 U. S. 486, 13 Sup. Ct. 512, 37 L. Ed. 251; Reid v. Fargo, 241 U. S. 544, 36 Sup. Ct. 712, 60 L. Ed. 1156; Watts, Watts & Co. v. Unione Austriaca di Navigazione, 248 U. S. 9, 39 Sup. Ct. 1, 63 L. Ed. 100, 3 A. L. R. 323.

[63] 72 Fed. 200, 18 C. C. A. 504.

case should be strengthened, render the procedure permitted in this case one of the gravest danger.[64]

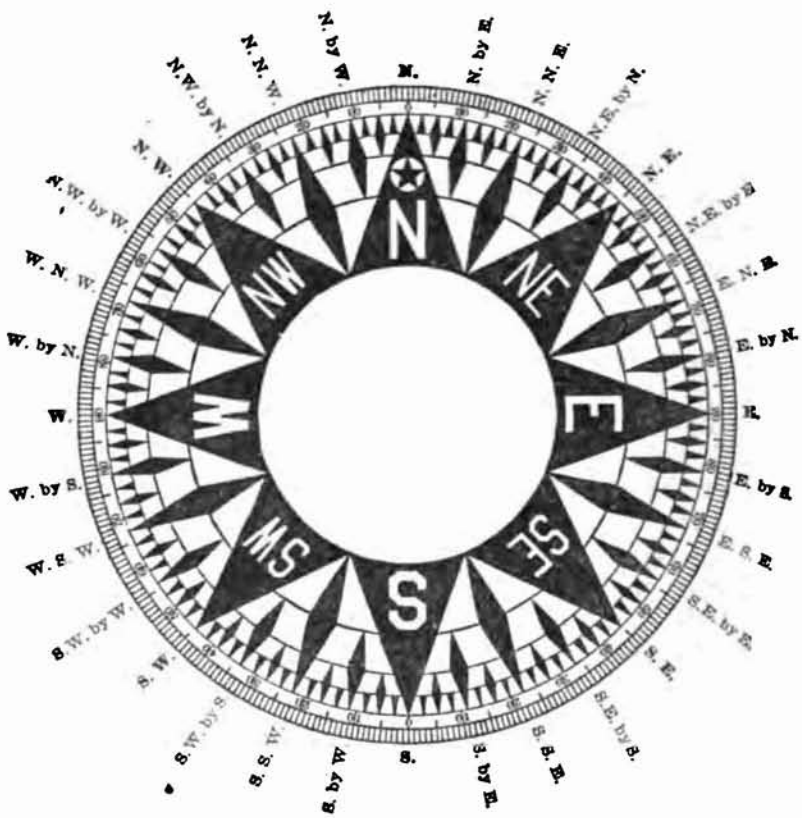
Under the present law, the appellate court remands the case to the District Court for final action, instead of entering its own decree, as the old Circuit Court did.

[64] Taylor v. Harwood, Taney, 437, Fed. Cas. No. 13,794. In Nellson v. Coal, Cement & Supply Co., 122 Fed. 617, 60 C. C. A. 175, the same court and judge emphasized the necessity of having the testimony taken down in the trial court. See, also, McDonald, 112 Fed. 681, 50 C. C. A. 423.

APPENDIX

1. The Mariner's Compass.
2. The Salvage Act of August 1, 1912.
3. Statutes Regulating Navigation, Including:
   (1) The International Rules.
   (2) The Rules for Coast and Connecting Inland Waters.
   (3) Lines between International and Inland Rules.
   (4) The Lake Rules.
   (5) The Mississippi Valley Rules.
   (6) The Act of March 3, 1899, as to Obstructing Channels.
   (7) The Stand-By Act of September 4, 1890.
4. The Limited Liability Acts Including:
   (1) The Act of March 3, 1851, as Amended.
   (2) The Act of June 26, 1884.
5. Section 941, Rev. St., as Amended, Regulating Release of Vessels from Arrest, on Bond or Stipulation.
6. Statutes Regulating Evidence in the Federal Courts.
7. The Handwriting Act of February 26, 1913.
8. Suits in Forma Pauperis.
9. Certain Admiralty Suits against the United States.
10. The Admiralty Rules of Practice.

1. THE MARINER'S COMPASS



2. THE SALVAGE ACT

ACT AUGUST 1, 1912 (37 Stat. 242, U. S. Comp. St. §§ 7990–7994).

An act to harmonize the national law of salvage with the provisions of the international convention for the unification of certain rules with respect to assistance and salvage at sea, and for other purposes.

Section 1. (U. S. Comp. St. § 7990.) **Salvage; remuneration not affected by ownership of vessel**—The right to remuneration for assistance or salvage services shall not be affected by common ownership of the vessels rendering and receiving such assistance or salvage services. (37 Stat. 242.)

Sec. 2. (U. S. Comp. St. § 7991.) **Assistance to be rendered by master; punishment for failure**—The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding one thousand dollars or imprisonment for a term not exceeding two years, or both. (37 Stat. 242.)

Sec. 3. (U. S. Comp. St. § 7992.) **Salvors of life to share in property saved**—Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories. (37 Stat. 242.)

Sec. 4. (U. S. Comp. St. § 7993.) **Time limit for salvage suits**—A suit for the recovery of remuneration for rendering assistance or salvage services shall not be maintainable if brought later than two years from the date when such assistance or salvage was rendered, unless the court in which the suit is brought shall be satisfied that during such

period there had not been any reasonable opportunity of arresting the assisted or salved vessel within the jurisdiction of the court or within the territorial waters of the country in which the libelant resides or has his principal place of business. (37 Stat. 242.)

Sec. 5. (U. S. Comp. St. § 7994.) **Act not applicable to ships of war, etc.**—Nothing in this Act shall be construed as applying to ships of war or to Government ships appropriated exclusively to a public service. (37 Stat. 242.)

3. STATUTES REGULATING NAVIGATION

(I) INTERNATIONAL RULES (26 Stat. 320, as amended, 28 Stat. 82, 29 Stat. 381, 885, 31 Stat. 30, and 34 Stat. 850 [U. S. Comp. St. §§ 7834–7871]).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Regulations for preventing collisions—The following regulations for preventing collisions at sea shall be followed by all public and private vessels of the United States upon the high seas and in all waters connected therewith, navigable by seagoing vessels. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 320, U. S. Comp. St. § 7834.)

PRELIMINARY

Meaning of words—In the following rules every steam-vessel which is under sail and not under steam is to be considered a sailing-vessel, and every vessel under steam, whether under sail or not, is to be considered a steam-vessel.

The word "steam-vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore, or aground. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 320, U. S. Comp. St. § 7835.)

RULES CONCERNING LIGHTS, AND SO FORTH

Meaning of word "visible"—The word "visible" in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 321, U. S. Comp. § 7836.)

Article 1. **Time for compliance with rules concerning lights**—The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 321, U. S. Comp. St. § 7837.)

Art. 2. **Lights of steam vessels under way**—A steam-vessel when under way shall carry—(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side,

and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam-vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 321, U. S. Comp. St. § 7838.)

Art 3. **Steam vessel towing another vessel or vessels**—A steam-vessel when towing another vessel shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such light, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds six hundred feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article two (a), excepting the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Such steam-vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 321, U. S. Comp. St. § 7839.)

Art. 4. **Vessel not under control, and telegraphic cable vessel**—(a) A vessel which from any accident is not under

command shall carry at the same height as a white light mentioned in article two (a), where they can best be seen, and if a steam-vessel in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all around the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, two black balls or shapes, each two feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in article two (a), and if a steam-vessel in lieu of that light, three lights in a vertical line one over the other not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all around the horizon, at a distance of at least two miles. By day she shall carry in a vertical line, one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in color, and the middle one diamond in shape and white.

(c) The vessels referred to in this article, when not making way through the water, shall not carry the side-lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this article are to be taken by other vessels as signals that the vessel showing them is not under command and can not therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in article thirty-one. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 322, U. S. Comp. St. § 7840.)

Art. 5. **Sailing vessel under way and vessel in tow**—A sailing vessel under way and any vessel being towed shall

carry the same lights as are prescribed by article two for a steam-vessel under way with the exception of the white lights mentioned therein, which they shall never carry. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 322, U. S. Comp. St. § 7841.)

Art. 6. **Small vessels under way in bad weather**—Whenever, as in the case of small vessels under way during bad weather, the green and red side-lights can not be fixed, these lights shall be kept at hand, lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy the lanterns containing them shall each be painted outside with the color of the light they respectively contain, and shall be provided with proper screens. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 322, U. S. Comp. St. § 7842.)

Art. 7. **Small vessels and rowing boats**—Steam vessels of less than forty, and vessels under oars or sails of less than twenty tons gross tonnage, respectively, and rowing boats, when under way, shall not be required to carry the lights mentioned in article two (a), (b), and (c), but if they do not carry them they shall be provided with the following lights:

First. Steam vessels of less than forty tons shall carry—

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in article two (a), and of such a character as to be visible at a distance of at least two miles.

(b) Green and red side-lights constructed and fixed as prescribed in article two (b) and (c), and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lanterns shall be carried not less than three feet below the white light.

Second. Small steamboats, such as are carried by seagoing vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern mentioned in subdivision one (b).

Third. Vessels under oars or sails of less than twenty tons shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

Fourth. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this article shall not be obliged to carry the lights prescribed by article four (a) and article eleven, last paragraph. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 322, amended Act May 28, 1894, c. 83, 28 Stat. 82, U. S. Comp. St. § 7843.)

Art. 8. **Pilot-vessel on and off pilotage duty**—Pilot vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash

or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side. . . .

A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board may show the white light instead of carrying it at the masthead, and may, instead of the colored lights above mentioned, have at hand, ready for use, a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot-vessels when not engaged on their station on pilotage duty shall carry lights similar to those of other vessels of their tonnage. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 323, U. S. Comp. St. § 7844.)

Steam pilot vessel—A steam pilot vessel, when engaged on her station on pilotage duty and in waters of the United States, and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white masthead light a red light, visible all around the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the colored side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty and in waters of the United States, and at anchor, she shall carry in addition to the lights required for all pilot boats the red light above mentioned, but not the colored side lights.

When not engaged on her station on pilotage duty, she shall carry the same lights as other steam vessels. (Act Feb. 19, 1900, c. 22, § 1, 31 Stat. 30, U. S. Comp. St. § 7845.)

Construction of preceding provision—This Act shall be construed as supplementary to article eight of the Act approved June seventh, eighteen hundred and ninety-seven, entitled "An Act to adopt regulations for preventing collisions upon certain harbors, rivers, and inland waters of the United States," and to article eight of an Act approved

August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea." (Act Feb. 19, 1900, c. 22, § 2, 31 Stat. 31, U. S. Comp. St. § 7846.)

Art. 9. **Fishing vessels and fishing boats**—Fishing vessels and fishing boats, when under way and when not required by this article to carry or show the lights hereinafter specified, shall carry or show the lights prescribed for vessels of their tonnage under way.

(a) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night, with outlying tackle extending not more than one hundred and fifty feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than one hundred and fifty feet horizontally from the boat into the seaway, shall carry one all-around white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least three feet below the first light and at a horizontal distance of at least five feet away from it in the direction in which the outlying tackle is attached.

(b) Vessels and boats, except open boats as defined in subdivision (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than six feet and not more than fifteen feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than five feet and not more than ten feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all around the horizon, and to be visible at a distance of not less than three miles.

Within the Mediterranean Sea and in the seas bordering

the coasts of Japan and Korea sailing fishing vessels of less than twenty tons gross tonnage shall not be obliged to carry the lower of these two lights. Should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

(c) Vessels and boats, except open boats as defined in subdivision (a), when line fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of subdivision (h), shall carry the same lights as vessels fishing with drift nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way, respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing vessels of less than twenty tons gross tonnage shall not be obliged to carry the lower of these two lights. Should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

(d) Vessels when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

First. If steam vessels, shall carry in the same position as the white light mentioned in article two (a) a tri-colored lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides, respectively; and not less than six nor more than twelve feet below the tri-colored lantern a white light in a lantern, so constructed as to show a clear, uniform, and unbroken light all around the horizon.

Second. If sailing vessels, shall carry a white light in a lantern, so constructed as to show a clear, uniform, and unbroken light all around the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in subdivision (d) first and second shall be visible at a distance of at least two miles.

(e) Oyster dredges and other vessels fishing with dredge nets shall carry and show the same lights as trawlers.

(f) Fishing vessels and fishing boats may at any time use a flare-up light in addition to the lights which they are by this article required to carry and show, and they may also use working lights.

(g) Every fishing vessel and every fishing boat under one hundred and fifty feet in length, when at anchor, shall exhibit a white light visible all around the horizon at a distance of at least one mile.

Every fishing vessel of one hundred and fifty feet in length or upward, when at anchor, shall exhibit a white light visible all around the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by article eleven.

Should any such vessel, whether under one hundred and fifty feet in length or of one hundred and fifty feet in length or upward, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least three feet below the anchor light, and at a horizontal distance of at least five feet away from it in the direction of the net or gear.

(h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day signal required by subdivision (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain storms make the signal

prescribed for a vessel at anchor. (See subdivision (d) and the last paragraph of article fifteen.)

(i) In fog, mist, falling snow, or heavy rain storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag net, and vessels line fishing with their lines out, shall, if of twenty tons gross tonnage or upward, respectively, at intervals of not more than one minute make a blast; if steam vessels, with the whistle or siren, and if sailing vessels, with the foghorn, each blast to be followed by ringing the bell. Fishing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

(k) All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

The vessels required by this article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by article four (a) and the last paragraph of article eleven. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 323, amended Act May 28, 1894, c. 83, 28 Stat. 82, and Act Jan. 19, 1907, c. 300, § 1, 34 Stat. 850, U. S. Comp. St. § 7847.)

Art. 10. **Vessel overtaken by another**—A vessel which is being overtaken by another shall show from her stern to such last mentioned vessel a white light or a flare-up light.

The white light required to be shown by this article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of

twelve points of the compass, namely, for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side-lights. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 324, U. S. Comp. St. § 7848.)

Art. 11. **Vessel at anchor or aground in or near fair-way**—A vessel under one hundred and fifty feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile.

A vessel of one hundred and fifty feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fair-way shall carry the above light or lights and the two red lights prescribed by article four (a). (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 324, U. S. Comp. St. § 7849.)

Art. 12. **Additional flare-up light or detonating signal**—Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that can not be mistaken for a distress signal. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 325, U. S. Comp. St. § 7850.)

Art. 13. **Ships of war and convoys**—Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to

additional station and signal-lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by ship-owners, which have been authorized by their respective Governments and duly registered and published. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 325, U. S. Comp. St. § 7851.)

Art. 14. **Steam vessels under sail only**—A steam-vessel proceeding under sail only but having her funnel up, shall carry in day-time, forward, where it can best be seen, one black ball or shape two feet in diameter. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 325, U. S. Comp. St. § 7852.)

Sound Signals for Fog, and so Forth

Art. 15. **Fog signals**—All signals prescribed by this article for vessels under way shall be given:

First. By "steam vessels" on the whistle or siren.

Second. By "sailing vessels" and "vessels towed" on the fog horn.

The words "prolonged blast" used in this article shall mean a blast of from four to six seconds duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn, to be sounded by mechanical means, and also with an efficient bell. (In all cases where the rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small seagoing vessels.)

A sailing vessel of twenty tons gross tonnage or upward shall be provided with a similar fog horn and bell.

In fog, mist, falling snow, or heavy rainstorms, whether by day or night, the signals described in this article shall be used as follows, namely:

(a) A steam vessel having way upon her shall sound at intervals of not more than two minutes, a prolonged blast.

(b) A steam vessel under way, but stopped, and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between.

(c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack, one blast; when on the port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession.

(d) A vessel when at anchor shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.

(e) A vessel when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command or unable to maneuver as required by the rules, shall, instead of the signals prescribed in subdivisions (a) and (c) of this article, at intervals of not more than two minutes, sound three blasts in succession, namely: One prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but, if they do not, they shall make some other efficient sound signal at intervals of not more than one minute. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 325, amended Act June 10, 1896, c. 401, § 1, 29 Stat. 381, U. S. Comp. St. § 7853.)

SPEED OF SHIPS TO BE MODERATE IN FOG, AND SO FORTH

Art. 16. **Speed of vessels in fog**—Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not as-

certained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 326, U. S. Comp. St. § 7854.)

STEERING AND SAILING RULES

Preliminary—Risk of Collision

Ascertainment of risk of collision—Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 326, U. S. Comp. St. § 7855.)

Art. 17. **Rules of avoidance of risk; sailing vessels approaching one another**—When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 326, U. S. Comp. St. § 7856.)

Art. 18. **Steam vessels meeting end on**—When two steam-vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to

starboard, so that each may pass on the port side of the other.

This article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side-lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 326, U. S. Comp. St. § 7857.)

Art. 19. **Steam vessels crossing**—When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7858.)

Art. 20. **Steam and sailing vessels meeting**—When a steam-vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sailing-vessel. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7859.)

Art. 21. **What vessel shall keep her course**—Where, by any of these rules, one of two vessels is to keep out of the way the other shall keep her course and speed.

Note.—When, in consequence of thick weather or oth-

er causes, such vessel finds herself so close that collision can not be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See articles twenty-seven and twenty-nine.) (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, amended Act May 28, 1894, c. 83, 28 Stat. 82, U. S. Comp. St. § 7860.)

Art. 22. **Vessel to avoid crossing ahead**—Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7861.)

Art. 23. **Steam vessel to slacken speed**—Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7862.)

Art. 24. **Overtaking vessel to keep out of the way; definition of "overtaking vessel"**—Notwithstanding anything contained in these rules every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position, with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel can not always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the

way. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7863.)

Art. 25. **Steam-vessel in narrow channel**—In narrow channels every steam-vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7864.)

Art. 26. **Sailing-vessels under way to avoid fishing boats; fishing boats not to obstruct fair-ways**—Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fair-way used by vessels other than fishing vessels or boats. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7865.)

Art. 27. **Obedience to and construction of rules**—In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 327, U. S. Comp. St. § 7866.)

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER

Art. 28. **Meaning of "short blast"; steam-vessel under way to signal course by whistle; meaning of one, two, three "short blasts"**—The words "short blast" used in this article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam-vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, namely:

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going at full speed astern." (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 328, U. S. Comp. St. § 7867.)

No Vessel, Under any Circumstances, to Neglect Proper Precautions

Art. 29. **Vessels not to neglect precautions**—Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 328, U. S. Comp. St. § 7868.)

Reservation of Rules for Harbors and Inland Navigation

Art. 30. **Reservation of rules for harbors, rivers, and inland waters**—Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river, or inland waters. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 328, U. S. Comp. St. § 7869.)

Distress Signals

Art. 31. **Distress signals, in day time; at night**—When a vessel is in distress and requires assistance from other vessels or from the shore the following shall be the signals to be used or displayed by her, either together or separately, namely:

In the daytime—

First. A gun or other explosive signal fired at intervals of about a minute.

Second. The international code signal of distress indicated by N. C.

Third. The distance signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.

Fourth. A continuous sounding with any fog-signal apparatus.

At night—

First. A gun or other explosive signal fired at intervals of about a minute.

Second. Flames on the vessel (as from a burning tar barrel, oil barrel, and so forth.)

Third. Rockets or shells throwing stars of any color or description, fired one at a time, at short intervals.

Fourth. A continuous sounding with any fog-signal apparatus. (Act Aug. 19, 1890, c. 802, § 1, 26 Stat. 328, amended Act May 28, 1894, c. 83, 28 Stat. 82, U. S. Comp. St. § 7870.)

Repeal—All laws or parts of laws inconsistent with the foregoing regulations for preventing collisions at sea for the navigation of all public and private vessels of the United States upon the high seas, and in all waters connected therewith navigable by sea-going vessels, are hereby repealed. (Act Aug. 19, 1890, c. 802, § 2, 26 Stat. 328, U. S. Comp. St. § 7871.)

(2) INLAND RULES (30 Stat. 96, as amended, 38 Stat. 381 [U. S. Comp. St. §§ 7872–7909]).

An act to adopt regulations for preventing collisions upon certain harbors, rivers, and inland waters of the United States.

Whereas the provisions of chapter eight hundred and two of the Laws of eighteen hundred and ninety, and the amendments thereto, adopting regulations for preventing collisions at sea [i. e. International rules supra], apply to all waters of the United States connected with the high seas navigable by sea-going vessels, except so far as the navigation of any harbor, river, or inland waters is regulated by special rules duly made by local authority; and

Whereas it is desirable that the regulations relating to the navigation of all harbors, rivers, and inland waters of

the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal and the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, shall be stated in one act: Therefore,

Be it enacted by the senate and house of representatives of the United States of America in Congress assembled:

Regulations for preventing collisions in harbors and on inland waters—The following regulations for preventing collision shall be followed by all vessels navigating all harbors, rivers, and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal and the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, and are hereby declared special rules duly made by local authority: (Act June 7, 1897, c. 4, § 1, 30 Stat. 96, U. S. Comp. St. § 7872.)

PRELIMINARY

Meaning of words "sailing-vessel," "steam-vessel," and "under way"—In the following rules every steam-vessel which is under sail and not under steam is to be considered a sailing-vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam-vessel" shall include any vessel propelled by machinery.

A vessel is "under way," within the meaning of these rules, when she is not at anchor, or made fast to the shore, or aground. (Act June 7, 1897, c. 4, § 1, 30 Stat. 96, U. S. Comp. St. § 7873.)

RULES CONCERNING LIGHTS, AND SO FORTH

Meaning of word "visible"—The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere. (Act June 7, 1897, c. 4, § 1, 30 Stat. 96, U. S. Comp. St. § 7874.)

Art. 1. **Period of compliance with rules concerning lights**—The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited. (Act June 7, 1897, c. 4, § 1, 30 Stat. 96, U. S. Comp. St. § 7875.)

Art. 2. **Lights of steam-vessel under way**—A steam-vessel when under way shall carry—

(a) On or in front of the foremast, or, if a vessel without a foremast, then in the fore part of the vessel, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A sea-going steam-vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a).

These two lights shall be so placed in line with the keel

that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

(f) All steam-vessels (except sea-going vessels and ferry-boats), shall carry in addition to green and red lights required by article two (b), (c), and screens as required by article two (d), a central range of two white lights; the after-light being carried at an elevation at least fifteen feet above the light at the head of the vessel. The head-light shall be so constructed as to show an unbroken light through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the after-light so as to show all around the horizon. (Act June 7, 1897, c. 4, § 1, 30 Stat. 96, U. S. Comp. St. § 7876.)

Art. 3. **Steam-vessel when towing another vessel or vessels**—A steam-vessel when towing another vessel shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, and when towing more than one vessel shall carry an additional bright white light three feet above or below such lights, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds six hundred feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article two (a) or the after range light mentioned in article two (f).

Such steam-vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam. (Act June 7, 1897, c. 4, § 1, 30 Stat. 97, U. S. Comp. St. § 7877.)

Art. 5. **Sailing-vessel under way or in tow**—A sailing-vessel under way or being towed shall carry the same lights

as are prescribed by article two for a steam-vessel under way; with the exception of the white lights mentioned therein, which they shall never carry. (Act June 7, 1897, c. 4, § 1, 30 Stat. 97, U. S. Comp. St. § 7878.)

Art. 6. **Small vessel under way in bad weather**—Whenever, as in the case of vessels of less than ten gross tons under way during bad weather, the green and red side-lights can not be fixed, these lights shall be kept at hand, lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy the lanterns containing them shall each be painted outside with the color of the light they respectively contain, and shall be provided with proper screens. (Act June 7, 1897, c. 4, § 1, 30 Stat. 97, U. S. Comp St. § 7879.)

Art. 7. **Rowboats**—Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision. (Act June 7, 1897, c. 4, § 1, 30 Stat. 98, U. S. Comp. St. § 7880.)

Art. 8. **Pilot-vessels on and off pilotage duty**—Pilot-vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be

shown on the port side nor the red light on the starboard side.

A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board may show the white light instead of carrying it at the masthead, and may, instead of the colored lights above mentioned, have at hand, ready for use, a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot-vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage. (Act June 7, 1897, c. 4, § 1, 30 Stat. 98, U. S. Comp. St. § 7881.)

Art. 9. **Small fishing-vessels**—(a) Fishing-vessels of less than ten gross tons, when under way and when not having their nets, trawls, dredges, or lines in the water, shall not be required to carry the colored side-lights; but every such vessel shall, in lieu thereof, have ready at hand a lantern with a green glass on one side and a red glass on the other side, and on approaching to or being approached by another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

(b) All fishing-vessels and fishing-boats of ten gross tons or upward, when under way and when not having their nets, trawls, dredges, or lines in the water, shall carry and show the same lights as other vessels under way.

(c) All vessels, when trawling, dredging, or fishing with any kind of drag-nets or lines, shall exhibit, from some part of the vessel where they can be best seen, two lights. One of these lights shall be red and the other shall be white. The red light shall be above the white light, and shall be at a vertical distance from it of not less than six feet and not more than twelve feet; and the horizontal distance between them, if any, shall not be more than ten feet. These two lights shall be of such a character and contained in lanterns of such construction as to be visible all round the horizon,

the white light a distance of not less than three miles and the red light of not less than two miles.

(d) Rafts, or other water craft not herein provided for, navigating by hand power, horse power, or by the current of the river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels. (Act June 7, 1897, c. 4, § 1, 30 Stat. 98, U. S. Comp. St. § 7882.)

Art. 10. **Vessel overtaken by another**—A vessel which is being overtaken by another, except a steam-vessel with an after range-light showing all around the horizon, shall show from her stern to such last-mentioned vessel a white light or a flare-up light. (Act June 7, 1897, c. 4, § 1, 30 Stat. 98, U. S. Comp. St. § 7883.)

Art. 11. **Vessel at anchor**—A vessel under one hundred and fifty feet in length when at anchor shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile.

A vessel of one hundred and fifty feet or upwards in length when at anchor shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry. (Act June 7, 1897, c. 4, § 1, 30 Stat. 98, U. S. Comp. St. § 7884.)

Art. 12. **Additional lights**—Every vessel may, if necessary, in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that can not be mis-

taken for a distress signal. (Act June 7, 1897, c. 4, § 1, 30 Stat. 99, U. S. Comp. St. § 7885.)

Art. 13. **Ships of war and convoys**—Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective Governments and duly registered and published. (Act June 7, 1897, c. 4, § 1, 30 Stat. 99, U. S. Comp. St. § 7886.)

Art. 14. **Steam-vessel under sail only**—A steam-vessel proceeding under sail only, but having her funnel up, may carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter. (Act June 7, 1897, c. 4, § 1, 30 Stat. 99, U. S. Comp. St. § 7887.)

Sound Signals for Fog, and so Forth

Art. 15. **Fog signals**—All signals prescribed by this article for vessels under way shall be given:

1. By "steam-vessels" on the whistle or siren.

2. By "sailing-vessels" and "vessels towed" on the fog horn.

The words "prolonged blast" used in this article shall mean a blast of from four to six seconds duration.

A steam-vessel shall be provided with an efficient whistle or siren, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn; also with an efficient bell.

A sailing-vessel of twenty tons gross tonnage or upward shall be provided with a similar fog horn and bell.

In fog, mist, falling snow, or heavy rainstorms, whether by day or night, the signals described in this article shall be used as follows, namely:

(a) A steam-vessel under way shall sound, at intervals of not more than one minute, a prolonged blast.

(c) A sailing-vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack, one blast; when on the port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession.

(d) A vessel when at anchor shall, at intervals, of not more than one minute, ring the bell rapidly for about five seconds.

(e) A steam-vessel when towing, shall, instead of the signals prescribed in subdivision (a) of this article, at intervals of not more than one minute, sound three blasts in succession, namely, one prolonged blast followed by two short blasts.

A vessel towed may give this signal and she shall not give any other.

(f) All rafts or other water craft, not herein provided for, navigating by hand power, horse power, or by the current of the river, shall sound a blast of the fog-horn, or equivalent signal, at intervals of not more than one minute. (Act June 7, 1897, c. 4, § 1, 30 Stat. 99, U. S. Comp. St. § 7888.)

SPEED OF SHIPS TO BE MODERATE IN FOG, AND SO FORTH

Art. 16. **Speed of vessels in fog**—Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam-vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over. (Act June 7, 1897, c. 4, § 1, 30 Stat. 99, U. S. Comp. St. § 7889.)

STEERING AND SAILING RULES

Preliminary—Risk of Collision

Ascertainment of risk of collision—Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist. (Act June 7, 1897, c. 4, § 1, 30 Stat. 100, U. S. Comp. St. § 7890.)

Art. 17. **Rules of avoidance of risk; sailing-vessels approaching one another**—When two sailing-vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (Act June 7, 1897, c. 4, § 1, 30 Stat. 100, U. S. Comp. St. § 7891.)

Art. 18. **Steam-vessels meeting end on**—Rule I. When steam-vessels are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other.

But if the courses of such vessels are so far on the starboard of each other as not to be considered as meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other.

The foregoing only applies to cases where vessels are meeting end on or nearly end on, in such a manner as to involve risk of collision; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own and by night to cases in which each vessel is in such a position as to see both the side-lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Rule III. If, when steam-vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam-whistle.

Rule V. Whenever a steam-vessel is nearing a short bend or curve, in the channel, where, from the height of the banks or other cause, a steam-vessel approaching from the opposite direction can not be seen for a distance of half a mile, such steam vessel, when she shall have arrived within half a mile of such curve, or bend, shall give a signal by one long blast of the steam whistle, which signal shall be answered by a similar blast, given by any approaching steam-vessel that may be within hearing. Should such signal be so answered by a steam-vessel upon the farther side of such

bend, then the usual signals for meeting and passing shall immediately be given and answered; but, if the first alarm signal of such vessel be not answered, she is to consider the channel clear and govern herself accordingly.

When steam-vessels are moved from their docks or berths, and other boats are liable to pass from any direction toward them, they shall give the same signal as in the case of vessels meeting at a bend, but immediately after clearing the berths so as to be fully in sight they shall be governed by the steering and sailing rules.

Rule VIII. When steam-vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam-whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall put her helm to port; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam-whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall put her helm to starboard; or if the vessel ahead does not think it safe for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam-whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals.

The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel.

Rule IX. The whistle signals provided in the rules under this article, for steam-vessels meeting, passing, or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the day time by a sight of the vessel itself, or by night by seeing its signal lights.

In fog, mist, falling snow or heavy rainstorms, when vessels can not so see each other, fog-signals only must be given. (Act June 7, 1897, c. 4, § 1, 30 Stat. 100, U. S. Comp. St. § 7892.)

Art. 19. **Steam-vessels crossing**—When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7893.)

Art. 20. **Steam and sailing vessels meeting**—When a steam-vessel and a sailing-vessel are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sailing-vessel. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7894.)

Art. 21. **What vessel shall keep her course**—Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7895.)

Art. 22. **Vessel to avoid crossing ahead**—Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7896.)

Art. 23. **Steam-vessels to slacken speed**—Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7897.)

Art. 24. **Overtaking vessel to keep out of the way; definition of "overtaking vessel"**—Notwithstanding anything contained in these rules every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position, with reference to the vessel which she is overtaking that at night she would be unable to see either

of that vessel's side-lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel can not always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the way. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7898.)

Art. 25. **Steam-vessel in narrow channels**—In narrow channels every steam-vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel. (Act June 7, 1897, c. 4, § 1, 30 Stat. 101, U. S. Comp. St. § 7899.)

Art. 26. **Sailing-vessels under way to avoid fishing boats; fishing boats not to obstruct fair-ways**—Sailing-vessels under way shall keep out of the way of sailing-vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fair-way used by vessels other than fishing-vessels or boats. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7900.)

Art. 27. **Obedience to and construction of rules**—In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7901.)

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER

Art. 28. **Signal of steam-vessel going at full speed astern**—When vessels are in sight of one another a steam-vessel

under way whose engines are going at full speed astern shall indicate that fact by three short blasts on the whistle. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7902.)

No Vessel Under any Circumstances to Neglect Proper Precautions

Art. 29. **Vessels not to neglect precautions**—Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7903.)

Art. 30. **War and revenue vessels**—The exhibition of any light on board of a vessel of war of the United States or a revenue cutter may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7904.)

Distress Signals

Art. 31. **Distress signals**—When a vessel is in distress and requires assistance from other vessels or from the shore the following shall be the signals to be used or displayed by her, either together or separately, namely:

In the Daytime

A continuous sounding with any fog-signal apparatus, or firing a gun.

At Night

First. Flames on the vessel as from a burning tar barrel, oil barrel, and so forth.

Second. A continuous sounding with any fog-signal apparatus, or firing a gun. (Act June 7, 1897, c. 4, § 1, 30 Stat. 102, U. S. Comp. St. § 7905.)

Rules to be established for steam-vessels passing, and as to lights on ferry-boats, barges and canal boats in tow, and as to lights and day signals for vessels and dredges working on wrecks—The supervising inspectors of steam vessels and the Supervising Inspector General shall establish such rules to be observed by steam vessels in passing each other and as to the lights to be carried by ferry-boats and by barges and canal boats when in tow of steam vessels, and as to the lights and day signals to be carried by vessels, dredges of all types, and vessels working on wrecks by other obstruction to navigation or moored for submarine operations, or made fast to a sunken object which may drift with the tide or be towed, not inconsistent with the provisions of this Act, as they from time to time may deem necessary for safety, which rules when approved by the Secretary of Commerce are hereby declared special rules duly made by local authority, as provided for in article thirty of chapter eight hundred and two of the laws of eighteen hundred and ninety. Two printed copies of such rules shall be furnished to such ferryboats, barges, dredges, canal boats, vessels working on wrecks, and steam vessels, which rules shall be kept posted up in conspicuous places in such vessels, barges, dredges, and boats. (Act June 7, 1897, c. 4, § 2, 30 Stat. 102, amended Act May 25, 1914, c. 98, 38 Stat. 381, U. S. Comp. St. § 7906.)

Pilots violating provisions of act; penalty; liability of vessel or owner—Every pilot, engineer, mate, or master of any steam-vessel, and every master or mate of any barge or canal-boat, who neglects or refuses to observe the provisions of this Act, or the regulations established in pursuance of the preceding section, shall be liable to a penalty of fifty dollars, and for all damages sustained by any passenger in his person or baggage by such neglect or refusal:

Provided, That nothing herein shall relieve any vessel, owner or corporation from any liability incurred by reason of such neglect or refusal. (Act June 7, 1897, c. 4, § 3, 30 Stat. 102, U. S. Comp. St. § 7907.)

Vessels navigated without compliance with act; penalty—Every vessel that shall be navigated without complying with the provisions of this Act shall be liable to a penalty of two hundred dollars, one-half to go to the informer, for which sum the vessel so navigated shall be liable and may be seized and proceeded against by action in any district court of the United States having jurisdiction of the offense. (Act June 7, 1897, c. 4, § 4, 30 Stat. 103, U. S. Comp. St. § 7908.)

Repeal—Sections forty-two hundred and thirty-three and forty-four hundred and twelve (with the regulations made in pursuance thereof, except the rules and regulations for the government of pilots of steamers navigating the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries, and except the rules for the Great Lakes and their connecting and tributary waters as far east as Montreal), and forty-four hundred and thirteen of the Revised Statutes of the United States, and chapter two hundred and two of the laws of eighteen hundred and ninety-three, and sections one and three of chapter one hundred and two of the laws of eighteen hundred and ninety-five, and sections five, twelve, and thirteen of the Act approved March third, eighteen hundred and ninety-seven, entitled "An Act to amend the laws relating to navigation," and all amendments thereto, are hereby repealed so far as the harbors, rivers, and inland waters aforesaid (except the Great Lakes and their connecting and tributary waters as far east as Montreal and the Red River of the North and rivers emptying into the Gulf of Mexico, and their tributaries) are concerned. (Act June 7, 1897, c. 4, § 5, 30 Stat. 103, U. S. Comp. St. § 7909.)

(3) LINES BETWEEN INTERNATIONAL AND INLAND RULES

The following lines dividing the high seas from rivers, harbors, and inland waters are hereby designated and defined pursuant to section 2 of the act of Congress of February 19, 1895. Waters inshore of the lines here laid down are "inland waters," and upon them the inland rules and pilot rules made in pursuance thereof apply. Upon the high seas, viz, waters outside of the lines here laid down, the international rules apply.

Inland waters on the Atlantic, Pacific, and Gulf coasts of the United States where the Inland Rules of the Road are to be followed; and inland waters of the United States bordering on the Gulf of Mexico where the Inland Rules of the Road or Pilot Rules for Western Rivers are to be followed.

(All bearings are in degrees true and points magnetic; distance in nautical miles, and are given approximately.)

Cutler (Little River) Harbor, Me.—A line drawn from Long Point 226° (SW. by W. 7/8 W.) to Little River Head.

Little Machias Bay, Machias Bay, Englishman Bay, Chandler Bay, Moosabec Reach, Pleasant Bay, Narraguagus Bay, and Pigeon Hill Bay, Me.—A line drawn from Little River Head 232° (WSW. 3/8 W.) to the outer side of Old Man; thence 234° (WSW. 1/2 W.) to the outer side of Double Shot Islands; thence 244° (W. 5/8 S.) to Libby Islands Lighthouse; thence 231½° (WSW. 1/4 W.) to Moose Peak Lighthouse; thence 232½° (WSW. 3/8 W.) to Little Pond Head; from Pond Point, Great Wass Island, 239° (W. by S.) to outerside of Crumple Island; thence 249° (W. 1/4 S.) to Petit Manan Lighthouse.

All Harbors on the Coast of Maine, New Hampshire, and Massachusetts Between Petit Manan Lighthouse, Me., and Cape Ann Lighthouses, Mass.—A line drawn from Petit Manan Lighthouse 205½° (SW. 1/4 S.), 26½ miles, to

Mount Desert Lighthouse; thence 250½° (W. ⅛ S.), about 33 miles, to Matinicus Rock Lighthouses; thence 267½° (WNW. ¾ W.), 20 miles, to Monhegan Island Lighthouse; thence 260° (W. ⅝ N.), 19½ miles, to Seguin Lighthouse; thence 233° (WSW. ⅛ W.), 18¼ miles, to Portland Light Vessel; thence 214½° (SW. ⅜ W.), 29½ miles, to Boon Island Lighthouse; thence 210° (SW.), 11 miles, to Anderson Ledge Spindle, off Isles of Shoals Lighthouse; thence 176¼° (S. by W.), 19½ miles, to Cape Ann Lighthouses, Mass.

Boston Harbor.—From Eastern Point Lighthouse 215° (SW. ⅜ W.), 15¾ miles, to The Graves Lighthouse; thence 139¼° (SSE. ⅜ E.), 7½ miles, to Minots Ledge Lighthouse.

All Harbors in Cape Cod Bay, Mass.—A line drawn from Plymouth (Gurnet) Lighthouses 77½° (E. ⅛ S.), 16¼ miles, to Race Point Lighthouse.

Nantucket Sound, Vineyard Sound, Buzzards Bay, Narragansett Bay, Block Island Sound, and Easterly Entrance to Long Island Sound.—A line drawn from Chatham Lighthouses, Mass., 146° (S. by E. ¾ E.), 4⅜ miles, to Pollock Rip Slue Light Vessel; thence 142° (SSE. ⅛ E.), 12¾ miles, to Great Round Shoal Entrance Gas and Whistling Buoy (PS); thence 229° (SW. by W. ⅝ W.), 14½ miles, to Sankaty Head Lighthouse; from Smith Point, Nantucket Island, 261° (W. ⅜ N.), 27 miles, to No Mans Land Gas and Whistling Buoy, 2; thence 359° (N. by E. ⅛ E.), 8⅛ miles, to Gay Head Lighthouse; thence 250° (W. ⅝ S.), 34½ miles, to Block Island Southeast Lighthouse; thence 250½° (W. ⅝ S.), 14¾ miles, to Montauk Point Lighthouse, on the easterly end of Long Island, N. Y.

New York Harbor.—A line drawn from Rockaway Point Coast Guard Station 159½° (S. by E.), 6¼ miles, to Ambrose Channel Light Vessel; thence 238½° (WSW. ⅛ W.), 8¼ miles, to Navesink (southerly) Lighthouse.

Philadelphia Harbor and Delaware Bay.—A line drawn

from Cape May Lighthouse 200° (SSW. ½ W.) 8½ miles, to Overfalls Light Vessel; thence 246¼° (WSW. ½ W.), 3⅛ miles, to Cape Henlopen Lighthouse.

Baltimore Harbor and Chesapeake Bay.—A line drawn from Cape Charles Lighthouse 179½° (S. ½ W.), 10½ miles, to Cape Henry Gas and Whistling Buoy, 2; thence 257° (W. ⅝ S.), 5 miles, to Cape Henry Lighthouse.

Charleston Harbor.—A line drawn from Ferris Wheel, on Isle of Palms, 154° (SSE. ¼ E.), 7 miles to Charleston Light Vessel; thence 259° (W. ⅞ S.), through Charleston Whistling Buoy, 6 C, 7⅝ miles, until Charleston Lighthouse bears 350° (N. ⅞ W.); thence 270° (W.), 2½ miles, to the beach of Folly Island.

Savannah Harbor and Calibogue Sound.—A line drawn from Braddock Point, Hilton Head Island, 150½° (SSE. ⅝ E.), 9¾ miles, to Tybee Gas and Whistling Buoy, T (PS); thence 270° (W.), to the beach of Tybee Island.

St. Simon Sound (Brunswick Harbor) and St. Andrew Sound.—From hotel on beach of St. Simon Island 15/16 mile 60° (NE. by E. ¼ E.) from St. Simon Lighthouse, 130° (SE. ½ E.), 6⅞ miles, to St. Simon Gas and Whistling Buoy (PS); thence 194° (S. by W. ⅛ W.), 8¾ miles, to St. Andrew Sound Bar Buoy (PS); thence 270° (W.), 4¾ miles, to the shore of Little Cumberland Island.

St. Johns River, Fla.—A straight line from the outer end of the northerly jetty to the outer end of the southerly jetty.

Florida Reefs and Keys.—A line drawn from the easterly end of the northerly jetty, at the entrance to the dredged channel ½ mile northerly of Norris Cut, 94° (E. ¼ S.), 1⅝ miles, to Florida Reefs North End Whistling Buoy, W (HS); thence 178° (S. ¼ E.), 8 miles, to Biscayne Bay Sea Bell Buoy, 1; thence 182° (S. ⅛ W.), 2⅜ miles, to Fowey Rocks Lighthouse; thence 188° (S. ⅝ W.), 6¾ miles, to Triumph Reef Beacon, O; thence 193° (S. by W.), 4½ miles, to Ajax Reef Beacon, M; thence 194° (S. by W.

⅛ W.), 2 miles, to Pacific Reef Beacon, L; thence 196½° (S. by W. ⅜ W.), 5 miles, to Turtle Harbor Sea Buoy, 2; thence 210° (SSW. ½ W.), 4⅞ miles, to Carysfort Reef Lighthouse; thence 209½° (SSW. ½ W.), 5¾ miles, to Elbow Reef Beacon, J; thence 217½° (SW. ¾ S.), 9¾ miles, to Molasses Reef Gas Buoy, 2 M; thence 235½° (SW. ¾ W.), 6 miles, to Conch Reef Beacon, E; thence 234½° (SW. ¾ W.), through Crocker Reef Beacon, D, 10⅜ miles, to Alligator Reef Lighthouse; thence 234° (SW. ⅝ W.), 10⅞ miles, to Tennessee Reef Buoy, 4; thence 251° (WSW. ⅛ W.), 10½ miles, to Coffins Patches Beacon, C; thence 247° (SW. by W. ¾ W.), 8¾ miles, to Sombrero Key Lighthouse; hence 253½° (WSW. ⅜ W.), 16¾ miles, to Looe Key Beacon, 6; thence 257½° (WSW. ¾ W.), 6⅜ miles to American Shoal Lighthouse; thence 253½° (WSW. ⅜ W.), 2⅞ miles, to Maryland Shoal Beacon, S; thence 259° (WSW. ⅞ W.), 5¼ miles, to Eastern Sambo Beacon, A; thence 253° (WSW. ¼ W.), 2¼ miles, to Western Sambo Beacon, R; thence 257° (WSW. ⅝ W.), through Western Sambo Buoy, 2, 5½ miles, to Key West Entrance Gas Buoy (PS); thence 262° (W. ⅞ S.), 4¼ miles, to Sand Key Lighthouse; thence 261° (W. by S.), 2¾ miles, to Western Dry Rocks Beacon, 2; thence 268° (W. ⅜ S.), 3½ miles, through Satan Shoal Buoy (HS) to Vestal Shoal Buoy, 1; thence 274½° (W. ⅛ N.), 5¼ miles, to Coal Bin Rock Buoy, CB (HS); thence 324½° (NW. ⅝ N.), 7¼ miles, to Marquesas Keys left tangent; from northwesterly point Marquesas Keys 59° (NE. by E.), 4⅜ miles, to Bar Buoy, 1, Boca Grande Channel; thence 83° (E. ⅞ N.), 9¾ miles, to Northwest Channel Entrance Bell Buoy, 1, Northwest Channel into Key West; thence 68° (NE. by E. ⅞ E.), 23½ miles, to northerly side of Content Keys; thence 49° (NE. ¼ E.), 29 miles, to East Cape, Cape Sable.

Charlotte Harbor and Punta Gorda, Fla.—Eastward of Charlotte Harbor Entrance Gas and Bell Buoy (PS), off

Boca Grande, and in Charlotte Harbor, in Pine Island Sound and Matlacha Pass. Pilot Rules for Western Rivers apply in Peace and Miakka Rivers north of a 250° and 70° (WSW. and ENE.) line through Mangrove Point Light; and in Caloosahatchee River northward of the steamboat wharf at Punta Rasa.

Tampa Bay and Tributaries, Fla.—From the southerly end of Long Key 245° (SW. by W. ⅝ W.), 9 miles, to Tampa Bay Gas and Whistling Buoy (PS); thence 129° (SE. ¾ E.), 6½ miles, to Bar Bell Buoy (PS), at the entrance to Southwest Channel; thence 103° (E. by S.), 2¾ miles, to the house on the north end of Anna Maria Key. Pilot Rules for Western Rivers apply in Manatee River inside Manatee River Entrance Buoy, 2; in Hillsboro Bay and River inside Hillsboro Bay Light, 2.

St. George Sound, Apalachicola Bay, Carrabelle and Apalachicola Rivers, and St. Vincent Sound, Fla.—North of a line from Lighthouse Point 246° (SW. by W. ⅝ W.), 13¼ miles, to southeasterly side of Dog Island; to northward of East Pass Bell Buoy, 1, at the entrance to East Pass, and inside West Pass Bell Buoy (PS) at the seaward entrance to West Pass. Pilot Rules for Western Rivers apply in Carrabelle River inside the entrance to the dredged channel; in Apalachicola River northward of Apalachicola Dredged Channel Entrance Buoy, 2.

Pensacola Harbor.—From Caucus Cut Entrance Gas and Whistling Buoy, 1A, 3° (N. ⅛ W.), tangent to easterly side of Fort Pickens, to the shore of Santa Rosa Island, and from the buoy northward in the buoyed channel through Caucus Shoal.

Mobile Harbor and Bay.—From Mobile Entrance Gas and Whistling Buoy (PS) 40° (NE. ⅞ N.) to shore of Mobile Point, and from the buoy 320° (NW.) to the shore of Dauphin Island. Pilot Rules for Western Rivers apply in Mobile River above Choctaw Point.

Sounds, Lakes, and Harbors on the Coasts of Alabama,

Mississippi, and Louisiana, Between Mobile Bay Entrance and the Delta of the Mississippi River.—From Sand Island Lighthouse 259° (WSW. 5/8 W.), 43½ miles to Chandeleur Lighthouse; westward of Chandeleur and Errol Islands, and west of a line drawn from the southwesterly point of Errol Island 182° (S. ¼ E.), 23 miles, to Pass a Loutre Lighthouse. Pilot Rules for Western Rivers apply in Pascagoula River, and in the dredged cut at the entrance to the river, above Pascagoula River Entrance Light, A, marking the entrance to the dredged cut.

New Orleans Harbor and the Delta of the Mississippi River.—Inshore of a line drawn from the outermost mud lump showing above low water at the entrance to Pass a Loutre to a similar lump off the entrance to Northeast Pass; thence to a similar lump off the entrance to Southeast Pass; thence to the outermost aid to navigation off the entrance to South Pass; thence to the outermost aid to navigation off the entrance to Southwest Pass; thence northerly, about 19½ miles, to the westerly point of the entrance to Bay Jaque.

Sabine Pass, Tex.—Pilot Rules for Western Rivers apply to Sabine Pass northward of Sabine Pass Gas and Whistling Buoy (PS), and in Sabine Lake and its tributaries. Outside of this buoy the International Rules apply.

Galveston Harbor.—A line drawn from Galveston North Jetty Light 129° (SE. by E. ¼ E.), 2 miles to Galveston Bar Gas and Whistling Buoy (PS); thence 276° (W. ⅛ S.), 2¼ miles, to Galveston (S.) Jetty Lighthouse.

Brazos River, Tex.—Pilot Rules for Western Rivers apply in the entrance and river inside of Brazos River Entrance Gas and Whistling Buoy (PS). International Rules apply outside the buoy.

San Diego Harbor.—A line drawn from southerly tower of Coronado Hotel 208° (S. by W.), 5 miles, to Outside Bar Whistling Buoy, SD (PS); thence 345° (NNW. ¾ W.), 3⅝ miles, to Point Loma Lighthouse.

San Francisco Harbor.—A line drawn through Mile Rocks Lighthouse 326° (NW. 5/8 W.) to Bonita Point Lighthouse.

Columbia River Entrance.—A line drawn from knuckle of Columbia River south jetty 351° (NNW. 7/8 W.) to Cape Disappointment Lighthouse.

Juan de Fuca Strait, Washington and Puget Sounds.—A line drawn from New Dungeness Lighthouse 13½° (N. by W.), 10⅜ miles, to Hein Bank Gas and Bell Buoy (HS); thence 337½° (NW. ¼ W.), 10¾ miles, to Lime Kiln Light, on west side of San Juan Island; from Bellevue Point, San Juan Island, 336½° (NW. ¼ W.) to Kellett Bluff, Henry Island; thence 347° (NW. 5/8 N.) to Turn Point Light; thence 71½° (NE. 1/8 E.), 8¼ miles, to westerly point of Skipjack Island; thence 38½° (N. by E. ¼ E.), 4⅜ miles, to Patos Islands Light; thence 338° (NW. 1/8 W.), 12 miles, to Point Roberts Light.

General Rule.—At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines have not been described, inland rules shall apply inshore of a line approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids.

(4) LAKE RULES (28 Stat. 645 [U. S. Comp. St. §§ 7910-7941]).

An act to regulate navigation on the Great Lakes and their connecting and tributary waters.

PRELIMINARY

Rules for preventing collisions on the Great Lakes—The following rules for preventing collisions shall be followed in the navigation of all public and private vessels of the United States upon the Great Lakes and their connecting and tributary waters as far east as Montreal. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 645, U. S. Comp. St. § 7910.)

STEAM AND SAIL VESSELS

Rule 1. **Meaning of words "sail-vessel," "steam-vessel," "under way"**—Every steam vessel which is under sail and not under steam, shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel. The word steam vessel shall include any vessel propelled by machinery. A vessel is under way within the meaning of these rules when she is not at anchor or made fast to the shore or aground. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 645, U. S. Comp. St. § 7911.)

LIGHTS

Rule 2. **Period of compliance with rules concerning lights; meaning of word "visible"**—The lights mentioned in the following rules and no others shall be carried in all weathers from sunset to sunrise. The word visible in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 645, U. S. Comp. St. § 7912.)

Rule 3. **Lights of steam-vessel under way**—Except in the cases hereinafter expressly provided for, a steam vessel when under way shall carry:

(a) On or in front of the foremast, or if a vessel without a foremast, then in the forepart of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so, however, that such height need not exceed forty feet, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such character as to be visible at a distance of at least five miles.

(b) On the starboard side, a green light, so constructed as to throw an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side, a red light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steamer of over one hundred and fifty feet register length shall also carry when under way an additional bright light similar in construction to that mentioned in subdivision (a), so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least three miles. Such additional light shall be placed in line with the keel at least fifteen feet higher from the deck and more than seventy-five feet abaft the light mentioned in subdivision (a). (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 645, U. S. Comp. St. § 7913.)

VESSELS TOWING

Rule 4. **Steam-vessel having a vessel in tow—A** steam vessel having a tow other than a raft shall in addition to the forward bright light mentioned in subdivision (a) of rule three carry in a vertical line not less than six feet above or below that light a second bright light of the same construction and character and fixed and carried in the same manner as the forward bright light mentioned in said subdivision (a) of rule three. Such steamer shall also car-

ry a small bright light abaft the funnel or after mast for the tow to steer by, but such light shall not be visible forward of the beam. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 646, U. S. Comp. St. § 7914.)

Rule 5. **Steam-vessel having a raft in tow**—A steam vessel having a raft in tow shall, instead of the forward lights mentioned in rule four, carry on or in front of the foremast, or if a vessel without a foremast then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so however that such height need not exceed forty feet, two bright lights in a horizontal line athwartships and not less than eight feet apart, each so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least five miles. Such steamer shall also carry the small bright steering light aft, of the character and fixed as required in rule four. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 646, U. S. Comp. St. § 7915.)

Rule 6. **Sailing-vessel under way or vessel in tow**—A sailing vessel under way and any vessel being towed shall carry the side lights mentioned in rule three.

A vessel in tow shall also carry a small bright light aft, but such light shall not be visible forward of the beam. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 646, U. S. Comp. St. § 7916.)

Rule 7. **Rules to be made for tugs**—The lights for tugs under thirty tons register whose principal business is harbor towing, and for boats navigating only on the River Saint Lawrence, also ferryboats, rafts, and canal boats, shall be regulated by rules which have been or may hereafter be prescribed by the Board of Supervising Inspectors of Steam Vessels. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 646, U. S. Comp. St. § 7917.)

Rule 8. **Small vessel may use portable lights**—Whenever, as in the case of small vessels under way during bad weath-

er, the green and red side lights can not be fixed, these lights shall be kept at hand lighted and ready for use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy, they shall each be painted outside with the color of the light they respectively contain, and shall be provided with suitable screens. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 646, U. S. Comp. St. § 7918.)

Rule 9. **Vessel at anchor**—A vessel under one hundred and fifty feet register length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern constructed so as to show a clear, uniform, and unbroken light, visible all around the horizon, at a distance of at least one mile.

A vessel of one hundred and fifty feet or upward in register length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7919.)

Rule 10. **Produce and canal boats**—Produce boats, canal boats, fishing boats, rafts, or other water craft navigating any bay, harbor, or river by hand power, horse power, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not otherwise provided for in these rules, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board

of Supervising Inspectors of Steam Vessels. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7920.)

Rule 11. **Open boats**—Open boats shall not be obliged to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up in addition if considered expedient. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7921.)

Rule 12. **Use of torch**—Sailing vessels shall at all times, on the approach of any steamer during the nighttime, show a lighted torch upon that point or quarter to which such steamer shall be approaching. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7922.)

Rule 13. **War and revenue ships**—The exhibition of any light on board of a vessel of war or revenue cutter of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7923.)

Fog Signals

Rule 14. **Fog signals of steam-vessels and sailing-vessels under way and at anchor**—A steam vessel shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, placed before the funnel not less than eight feet from the deck, or in such other place as the local inspectors of steam vessels shall determine, and of such character as to be heard in ordinary weather at a distance

of at least two miles, and with an efficient bell, and it is hereby made the duty of the United States local inspectors of steam vessels when inspecting the same to require each steamer to be furnished with such whistle and bell. A sailing vessel shall be provided with an efficient fog horn and with an efficient bell.

Whenever there is thick weather by reason of fog, mist, falling snow, heavy rainstorms, or other causes, whether by day or by night, fog signals shall be used as follows:

(a) A steam vessel under way, excepting only a steam vessel with a raft in tow, shall sound at intervals of not more than one minute three distinct blasts of her whistle.

(b) Every vessel in tow of another vessel shall, at intervals of one minute, sound four bells on a good and efficient and properly-placed bell as follows: By striking the bell twice in quick succession, followed by a little longer interval, and then again striking twice in quick succession (in the manner in which four bells is struck in indicating time).

(c) A steamer with a raft in tow shall sound at intervals of not more than one minute a screeching or Modoc whistle for from three to five seconds.

(d) A sailing vessel under way and not in tow shall sound at intervals of not more than one minute—

If on the starboard tack with wind forward of abeam, one blast of her fog horn;

If on the port tack with wind forward of the beam, two blasts of her fog horn;

If she has the wind abaft the beam on either side, three blasts of her fog horn.

(e) Any vessel at anchor and any vessel aground in or near a channel or fairway shall at intervals of not more than two minutes ring the bell rapidly for three to five seconds.

(f) Vessels of less than ten tons registered tonnage, not being steam vessels, shall not be obliged to give the above-

mentioned signals, but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

(g) Produce boats, fishing boats, rafts, or other water craft navigating by hand power or by the current of the river, or anchored or moored in or near the channel or fairway and not in any port, and not otherwise provided for in these rules, shall sound a fog horn or equivalent signal, at intervals of not more than one minute. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 647, U. S. Comp. St. § 7924.)

Rule 15. **Reduced speed in thick weather**—Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rain storms, or other causes, go at moderate speed. A steam vessel hearing, apparently not more than four points from right ahead, the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 648, U. S. Comp. St. § 7925.)

STEERING AND SAILING RULES

Sailing-Vessels

Rule 16. **Avoidance of risk of collision; sailing-vessels approaching one another**—When two sailing vessels are approaching one another so as to involve risk of collision one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is closehauled.

(b) A vessel which is closehauled on the port tack shall keep out of the way of a vessel which is closehauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When they are running free, with the wind on the

same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 648, U. S. Comp. St. § 7926.)

Steam-Vessels

Rule 17. **Steam-vessels meeting end on**—When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision each shall alter her course to starboard, so that each shall pass on the port side of the other. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 648, U. S. Comp. St. § 7927.)

Rule 18. **Steam-vessels crossing**—When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 648, U. S. Comp. St. § 7928.)

Rule 19. **Steam and sailing vessels meeting**—When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision the steam vessel shall keep out of the way of the sailing vessel. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 648, U. S. Comp. St. § 7929.)

Rule 20. **What vessel shall keep her course**—Where, by any of the rules herein prescribed, one of two vessels shall keep out of the way, the other shall keep her course and speed. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7930.)

Rule 21. **What vessel to slacken speed**—Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7931.)

Rule 22. **Overtaking vessel to keep out of the way**—Notwithstanding anything contained in these rules every vessel overtaking any other shall keep out of the way of the overtaken vessel. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7932.)

Rule 23. **Whistle signals; one blast, two blasts**—In all weathers every steam vessel under way in taking any course authorized or required by these rules shall indicate that course by the following signals on her whistle, to be accompanied whenever required by corresponding alteration of her helm; and every steam vessel receiving a signal from another shall promptly respond with the same signal or, as provided in Rule Twenty-six:

One blast to mean, "I am directing my course to starboard."

Two blasts to mean, "I am directing my course to port." But the giving or answering signals by a vessel required to keep her course shall not vary the duties and obligations of the respective vessels. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7933.)

Rule 24. **Vessels in rivers Saint Mary and Saint Clair**—That in all narrow channels where there is a current, and in the rivers Saint Mary, Saint Clair, Detroit, Niagara, and Saint Lawrence, when two steamers are meeting, the descending steamer shall have the right of way, and shall, before the vessels shall have arrived within the distance of one-half mile of each other, give the signal necessary to indicate which side she elects to take. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7934.)

Rule 25. **Vessels in narrow channels**—In all channels less than five hundred feet in width, no steam vessel shall pass another going in the same direction unless the steam vessel ahead be disabled or signify her willingness that the steam vessel astern shall pass, when the steam vessel astern may pass, subject, however, to the other rules applicable to such a situation. And when steam vessels proceeding in opposite directions are about to meet in such channels, both such vessels shall be slowed down to a moderate speed, according to the circumstances. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7935.)

Rule 26. **Refusal to pass**—If the pilot of a steam vessel

to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7936.)

Rule 27. **Obedience to and construction of rules**—In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7937.)

Rule 28. **Vessels not to neglect precautions**—Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of a neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Act Feb. 8, 1895, c. 64, § 1, 28 Stat. 649, U. S. Comp. St. § 7938.)

Violations of provisions of act; penalty—A fine, not exceeding two hundred dollars, may be imposed for the violation of any of the provisions of this Act. The vessel shall be liable for the said penalty, and may be seized and proceeded against, by way of libel, in the district court of the United States for any district within which such vessel may be found. (Act Feb. 8, 1895, c. 64, § 2, 28 Stat. 649, U. S., Comp. St. § 7939.)

Regulations; steam-vessels passing; copies of rules—The Secretary of the Treasury of the United States shall have authority to establish all necessary regulations, not inconsistent with the provisions of this Act, required to carry the same into effect.

The Board of Supervising Inspectors of the United States shall have authority to establish such regulations to be observed by all steam vessels in passing each other, not inconsistent with the provisions of this Act, as they shall from time to time deem necessary; and all regulations adopted by the said Board of Supervising Inspectors under the authority of this Act, when approved by the Secretary of the Treasury, shall have the force of law. Two printed copies of any such regulations for passing, signed by them, shall be furnished to each steam vessel, and shall at all times be kept posted up in conspicuous places on board. (Act Feb. 8, 1895, c. 64, § 3, 28 Stat. 649, U. S. Comp. St. § 7940.)

Repeal—That all laws or parts of laws, so far as applicable to the navigation of the Great Lakes and their connecting and tributary waters as far east as Montreal, inconsistent with the foregoing rules are hereby repealed. (Act Feb. 8, 1895, c. 64, § 4, 28 Stat. 650, U. S. Comp. St. § 7941.)

(5) MISSISSIPPI VALLEY RULES (Rev. St. § 4233, as amended [U. S. Comp. St. §§ 7942–7974]).

Rules for preventing collisions—The following rules for preventing collisions on the water, shall be followed in the navigation of vessels of the Navy and of the mercantile marine of the United States. (R. S. § 4233, U. S. Comp. St. § 7942.)

STEAM AND SAIL VESSELS

Rule 1. **Meaning of words "sail vessel" and "steam vessel"**—Every steam vessel which is under sail and not under steam shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel. The words steam ves-

sel shall include any vessel propelled by machinery. (R. S. § 4233, amended Act March 3, 1905, c. 1457, § 10, 33 Stat. 1032, U. S. Comp. St. § 7943.)

LIGHTS

Rule 2. **Period of compliance with rules concerning lights**—The lights mentioned in the following rules, and no others, shall be carried in all weathers, between sunset and sunrise. (R. S. § 4233, U. S. Comp. St. § 7944.)

Rule 3. **Lights of ocean steamers, and steamers carrying sail, under way**—All ocean-going steamers, and steamers carrying sail, shall, when under way, carry—

(a) At the foremast head, a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

(b) On the starboard side, a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(c) On the port side, a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the

lights, so as to prevent them from being seen across the bow. (R. S. § 4233, U. S. Comp. St. § 7945.)

Rule 4. **Steam-vessel towing other vessels**—Steam-vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side-lights, so as to distinguish them from other steam-vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by Rule three. (R. S. § 4233, U. S. Comp. St. § 7946.)

Rule 5. **Steam-vessels other than ocean steamers, and steamers carrying sail**—All steam-vessels, other than ocean-going steamers and steamers carrying sail, shall, when under way, carry on the starboard and port sides lights of the same character and construction and in the same position as are prescribed for side-lights by Rule three, except in the case provided in Rule six. (R. S. § 4233, U. S. Comp. St. § 7947.)

Rule 6. **Vessels on waters flowing into Gulf of Mexico**—River-steamers navigating waters flowing into the Gulf of Mexico, and their tributaries, shall carry the following lights, namely: One red light on the outboard side of the port smoke-pipe, and one green light on the outboard side of the starboard smoke-pipe. Such lights shall show both forward and abeam on their respective sides. (R. S. § 4233, U. S. Comp. St. § 7948.)

Rule 7. **Coasting and inland waters steam-vessels, ferry-boats, barges and canal-boats**—All coasting steam-vessels, and steam-vessels other than ferry-boats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States, except those mentioned in Rule six, shall carry the red and green lights, as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights; the after-light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The headlight shall be so constructed as to show a good light through twenty points

of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the after-light so as to show all around the horizon. The lights for ferry-boats, barges and canal boats when in tow of steam vessels, shall be regulated by such rules as the board of supervising inspectors of steam-vessels shall prescribe. (R. S. § 4233, amended Act March 3, 1893, c. 202, and Act March 3, 1893, c. 202, 27 Stat. 557, U. S. Comp. St. § 7949.)

Rule 8. **Sailing-vessels under way or in tow**—Sail-vessels, under way or being towed, shall carry the same lights as steam-vessels under way, with the exception of the white mast-head lights, which they shall never carry. (R. S. § 4233, U. S. Comp. St. § 7950.)

Rule 9. **Small vessels in bad weather**—Whenever, as in case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side. To make the use of these portable lights more certain and easy, they shall each be painted outside with the color of the light they respectively contain, and shall be provided with suitable screens. (R. S. § 4233, U. S. Comp. St. § 7951.)

Rule 10. **Vessels at anchor**—All vessels, whether steam-vessels or sail-vessels, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and at a distance of at least one mile. (R. S. § 4233, U. S. Comp. St. § 7952.)

Rule 11. **Sailing and steam pilot-vessels**—Sailing pilot-vessels shall not carry the lights required for other sailing-vessels, but shall carry a white light at the mast-head, visible all around the horizon, and shall also exhibit a flare-up light every fifteen minutes.

Steam pilot boats shall, in addition to the masthead light and green and red side lights required for ocean steam vessels, carry a red light hung vertically from three to five feet above the foremast headlight, for the purpose of distinguishing such steam pilot boats from other steam vessels. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 5, 29 Stat. 689, U. S. Comp. St. § 7953.)

Rule 12. **Coal and trading boats**—Coal-boats, trading-boats, produce-boats, canal-boats, oyster-boats, fishing-boats, rafts, or other water-craft, navigating any bay, harbor, or river, by hand-power, horse-power, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the board of supervising inspectors of steam-vessels. (R. S. § 4233, U. S. Comp. St. § 7954.)

Rule 13. **Open boats**—Open boats shall not be required to carry the side-lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and, on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up, in addition, if considered expedient. (R. S. § 4233, U. S. Comp. St. § 7955.)

Rule 14. **Ships of war and revenue cutters**—The exhibition of any light on board of a vessel of war of the United

States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it. The exhibition of any light on board of a revenue cutter of the United States may be suspended whenever, in the opinion of the commander of the vessel, the special character of the service may require it. (R. S. § 4233, amended, Act March 3, 1897, c. 389, § 12, 29 Stat. 690, U. S. Comp. St. § 7956.)

Fog Signals

Rule 15. **Fog signals**—(a) Whenever there is a fog, or thick weather, whether by day or night, fog signals shall be used as follows: Steam vessels under way shall sound a steam whistle placed before the funnel, not less than eight feet from the deck, at intervals of not more than one minute. Steam vessels, when towing, shall sound three blasts of quick succession repeated at intervals of not more than one minute.

(b) Sail vessels under way shall sound a fog horn at intervals of not more than one minute.

(c) Steam vessels and sail vessels, when not under way, shall sound a bell at intervals of not more than two minutes.

(d) Coal-boats, trading-boats, produce-boats, canal-boats, oyster-boats, fishing-boats, rafts, or other water-craft, navigating any bay, harbor, or river, by hand-power, horse-power, sail, or by the current of the river, or anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not in any port, shall sound a fog-horn, or equivalent signal, which shall make a sound equal to a steam-whistle, at intervals of not more than two minutes. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 12, 29 Stat. 690, U. S. Comp. St. § 7957.)

STEERING AND SAILING RULES

Rule 16. **Ascertainment of risk of collision**—Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change such risk should be deemed to exist. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 12, 29 Stat. 690, U. S. Comp. St. § 7958.)

Rule 17. **Rules of avoidance of risk; sailing-vessels approaching one another**—When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both vessels are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 12, 29 Stat. 690, U. S. Comp. St. § 7959.)

Rule 18. **Steam-vessels meeting end on**—If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other. (R. S. § 4233, U. S. Comp. St. § 7960.)

Rule 19. **Steam-vessels crossing**—If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep

out of the way of the other. (R. S. § 4233, U. S. Comp. St. § 7961.)

Rule 20. **Steam and sailing vessels meeting**—If two vessels, one of which is a sail-vessel and the other a steam-vessel, are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sail-vessel. (R. S. § 4233, U. S. Comp. St. § 7962.)

Rule 21. **Speed of steam-vessel approaching another vessel and in fog**—Every steam-vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-vessel shall, when in a fog, go at a moderate speed. (R. S. § 4233, U. S. Comp. St. § 7963.)

Rule 22. **Overtaking vessel to keep out of the way**—Every vessel overtaking any other vessel shall keep out of the way of the last-mentioned vessel. (R. S. § 4233, U. S. Comp. St. § 7964.)

Rule 23. **What vessel shall keep her course**—Where, by Rules seventeen, nineteen, twenty, and twenty-two, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of Rule twenty-four. (R. S. § 4233, U. S. Comp. St. § 7965.)

Rule 24. **Obedience to and construction of rules**—In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. (R. S. § 4233, U. S. Comp. St. § 7966.)

Rule 25. **Sailing-vessel overtaken**—A sail vessel which is being overtaken by another vessel during the night shall show from her stern to such last-mentioned vessel a torch or a flare-up light. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 13, 29 Stat. 690, U. S. Comp. St. § 7967.)

Rule 26. **Vessels not to neglect precautions**—Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neg-

lect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case. (R. S. § 4233, amended Act March 3, 1897, c. 389, § 13, 29 Stat. 690, U. S. Comp. St. § 7968.)

Regulations of towage of seagoing barges within inland waters—The chairman of the Light-House Board, the Supervising Inspector-General of the Steamboat-Inspection Service, and the Commissioner of Navigation shall convene as a board at such times as the Secretary of Commerce and Labor shall prescribe to prepare regulations limiting the length of hawsers between towing vessels and seagoing barges in tow and the length of such tows within any of the inland waters of the United States designated and defined from time to time pursuant to section two of the Act approved February nineteenth, eighteen hundred and ninety-five, and such regulations when approved by the Secretary of Commerce and Labor shall have the force of law. (Act May 28, 1908, c. 212, § 14, 35 Stat. 428, U. S. Comp. St. § 7969.)

Violation of regulations by master of towing vessel; penalty—The master of the towing vessel shall be liable to the suspension or revocation of his license for any willful violation of regulations issued pursuant to section fourteen in the manner now prescribed for incompetency, misconduct, or unskillfulness. (Act May 28, 1908, c. 212, § 15, 35 Stat. 429, U. S. Comp. St. § 7970.)

Rules for preventing collisions extended to harbors—On and after March first, eighteen-hundred and ninety-five, the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regulations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States. The provisions of said sections of the Revised Statutes and regulations pursuant

thereto are hereby declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in Article thirty, of the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea." (Act Feb. 19, 1895, c. 102, § 1, 28 Stat. 672, U. S. Comp. St. § 7971.)

Secretary of Treasury to define lines dividing high seas from rivers and harbors—The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearing or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters. (Act Feb. 19, 1895, c. 102, § 2, 28 Stat. 672, U. S. Comp. St. § 7972.)

Signal lights; penalty for violation—Collectors or other chief officers of the customs shall require all sail vessels to be furnished with proper signal lights. Every such vessel that shall be navigated without complying with the Statutes of the United States, or the regulations that may be lawfully made thereunder, shall be liable to a penalty of two hundred dollars, one-half to go to the informer; for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. (Act Feb. 19, 1895, c. 102, § 3, 28 Stat. 672, U. S. Comp. St. § 7973.)

Inland waters defined—The words "inland waters" used in this Act shall not be held to include the Great Lakes and their connecting and tributary waters as far east as Montreal; and this Act shall not in any respect modify or affect the provisions of the Act entitled "An Act to regulate navigation of the Great Lakes and their connecting and tributary waters," approved February eighth, eighteen hundred and ninety-five. (Act Feb. 19, 1895, c. 102, § 4, 28 Stat. 672, U. S. Comp. St. § 7974.)

(6) ACT MARCH 3, 1899 (30 Stat. 1152 [U. S. Comp. St. §§ 9920, 9921, 9924, 9925]).

Obstructions by vessels, anchored or sunk, and floating timber; marking and removal of sunken vessels—It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidently or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for. (Act March 3, 1899, c. 425, § 15, 30 Stat. 1152, U. S. Comp. St. § 9920.)

Penalty for violation of provisions of act—Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such

fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section thirteen of this Act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this Act, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section fifteen of this Act, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof. (Act March 3, 1899, c. 425, § 16, 30 Stat. 1153, U. S. Comp. St. § 9921.)

Removal of obstructions to navigation; notice; proposals to remove; bond of bidder; disposition of proceeds—Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water

craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: Provided, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: And provided also, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: Provided, That such bidder shall give satisfactory security to execute the work: Provided further, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. (Act March 3, 1899, c. 425, § 19, 30 Stat. 1154, U. S. Comp. St. § 9924.)

Destruction of certain vessels grounding; appropriation; repeal—Under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or

grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: Provided, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: And provided further, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

Such sum of money as may be necessary to execute this section and the preceding section of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

That all laws or parts of laws inconsistent with the foregoing sections nine to twenty, inclusive, of this Act are hereby repealed: Provided, That no action begun or right of action accrued prior to the passage of this Act shall be affected by this repeal: Provided further, That nothing con-

tained in the said foregoing sections shall be construed as repealing, modifying, or in any manner affecting the provisions of an Act of Congress approved June twenty-ninth, eighteen hundred and eighty-eight, entitled "An Act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offense" as amended by section three of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four. (Act March 3, 1899, c. 425, § 20, 30 Stat. 1154, amended Act Feb. 20, 1900, c. 23, § 3, 31 Stat. 32, and Act June 13, 1902, c. 1079, § 12, 32 Stat. 375, U. S. Comp. St. § 9925.)

(7) STAND-BY ACT OF SEPTEMBER 4, 1890 (26 Stat. 425 [U. S. Comp. St. §§ 7979, 7980]).

An act in regard to collision at sea.

Section 1. **Duties of master of vessel in case of collision**—In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and her port of registry, or the port or place to which she belongs, and also the name of the ports and places from which and to which she is bound. If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default. (Act Sept. 4, 1890, c. 875, § 1, 26 Stat. 425, U. S. Comp. St. § 7979.)

Sec. 2. **Failure to comply with act; penalty**—Every master or person in charge of a United States vessel who fails without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of one thousand dollars, or imprisonment for a term not exceeding two years; and for the above sum the vessel shall be liable and may be seized and proceeded against by process in any district court of the United States by any person; one-half such sum to be payable to the informer and the other half to the United States. (Act Sept. 4, 1890, c. 875, § 2, 26 Stat. 425, U. S. Comp. St. § 7980.)

4. THE LIMITED LIABILITY ACTS

(1) ACT MARCH 3, 1851 (Rev. St. §§ 4282–4289, as amended February 27, 1877, February 18, 1875, and June 19, 1886 [U. S. Comp. St. §§ 8020–8027]).

Loss by fire—No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner. (R. S. § 4282, U. S. Comp. St. § 8020.)

Liability of owner not to exceed interest—The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. (R. S. § 4283, U. S. Comp. St. § 8021.)

Apportionment of compensation—Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. § 4284, amended Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 251, U. S. Comp. St. § 8022.)

Transfer of interest of owner to trustee—It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease. (R. S. § 4285, U. S. Comp. St. § 8023.)

When charterer is deemed owner—The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this Title relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. § 4286, U. S. Comp. St. § 8024.)

Remedies reserved—Nothing in the five preceding sections shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel. (R. S. § 4287, U. S. Comp. St. § 8025.)

Shipping inflammable materials—Any person shipping oil of vitriol, unslaked lime, inflammable matches, or gunpowder, in a vessel taking cargo for divers persons on freight, without delivering, at the time of shipment, a note in writing, expressing the nature and character of such merchandise, to the master, mate, officer, or person in charge of the lading of the vessel, shall be liable to the United States in a penalty of one thousand dollars. But this section shall not apply to any vessel of any description whatsoever used in rivers or inland navigation. (R. S. § 4288, U. S. Comp. St. § 8026.)

Limitation of liability of owners applied to all vessels—The provisions of the seven preceding sections, and of section eighteen of an act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying-trade, and for other purposes," approved June twenty-sixth, eighteen hundred and eighty-four, relating to the limitations of the liability of the owners of vessels, shall apply to all sea going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canalboats, barges, and lighters. (R. S. § 4289, amended Act Feb. 18, 1875, c. 80, § 1, 18 Stat. 320, and Act June 19, 1886, c. 421, § 4, 24 Stat. 80, U. S. Comp. St. § 8027.)

(2) ACT JUNE 26, 1884, § 18 (U. S. Comp. St. § 8028).

Liability of owners of vessels for debts limited—The individual liability of a ship-owner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners. (Act June 26, 1884, c. 121, § 18, 23 Stat. 57, U. S. Comp. St. § 8028.)

5. BONDS OR STIPULATIONS TO RELEASE VESSELS FROM ARREST

REV. ST. § 941, AS AMENDED (U. S. Comp. St. § 1567).

An act to amend section nine hundred and forty-one of the Revised Statutes.

Delivery bond in admiralty proceedings—When a warrant of arrest or other process in rem is issued in any cause of admiralty jurisdiction, except in cases of seizures for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libelant, with sufficient surety, to be approved by the judge of the court where the cause is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court, and judgment thereon, against both the principal and sureties, may be recovered at the time of rendering the decree in the original cause. And the owner of

any vessel may cause to be executed and delivered to the marshal a bond or stipulation, with sufficient surety, to be approved by the judge of the court in which he is marshal, conditioned to answer the decree of said court in all or any cases that shall thereafter be brought in said court against the said vessel, and thereupon the execution of all such process against said vessel shall be stayed so long as the amount secured by such bond or stipulation shall be at least double the aggregate amount claimed by the libelants in such suits which shall be begun and pending against said vessel; and like judgments and remedies may be had on said bond or stipulation as if a special bond or stipulation had been filed in each of said suits. The court may make such orders as may be necessary to carry this section into effect, and especially for the giving of proper notice of any such suit. Such bond or stipulation shall be indorsed by the clerk with a minute of the suits wherein process is so stayed, and further security may at any time be required by the court. If a special bond or stipulation in the particular cause shall be given under this section, the liability as to said cause on the general bond or stipulation shall cease. (R. S. § 941, amended Act March 3, 1899, c. 441, 30 Stat. 1354, U. S. Comp. St. § 1567.)

6. STATUTES REGULATING EVIDENCE IN THE FEDERAL COURTS

Mode of proof in equity and admiralty causes—The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the Supreme Court, except as herein specially provided. (R. S. § 862, U. S. Comp. St. § 1470.)

Competency of witnesses; civil cases—The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is

held. (R. S. § 858, amended Act June 29, 1906, c. 3608, 34 Stat. 618, U. S. Comp. St. § 1464.)

Depositions de bene esse—The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the

same manner as witnesses may be compelled to appear and testify in court. (R. S. § 863, U. S. Comp. St. § 1472.)

Mode of taking depositions de bene esse—Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. (R. S. § 864, amended Act May 23, 1900, c. 541, 31 Stat. 182, U. S. Comp. St. § 1473.)

Transmission to the court of depositions de bene esse—Every deposition taken under the two preceding sections shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause. (R. S. § 865, U. S. Comp. St. § 1474.)

Depositions under a dedimus potestatem and in perpetuam—In any case where it is necessary, in order to prevent a failure or delay of justice, any of the courts of the United States may grant a dedimus potestatem to take depositions according to common usage; and any circuit court, upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken in perpetuam rei memoriam, if they relate to any matters that

may be cognizable in any court of the United States. And the provisions of sections eight hundred and sixty-three, eight hundred and sixty-four, and eight hundred and sixty-five, shall not apply to any deposition to be taken under the authority of this section. (R. S. § 866, U. S. Comp. St. § 1477.)

Depositions in perpetuam; admissible at discretion of court—Any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken in perpetuam rei memoriam, which would be so admissible in a court of the State wherein such cause is pending, according to the laws thereof. (R. S. § 867, U. S. Comp. St. § 1478.)

Deposition under dedimus potestatem; how taken—When a commission is issued by any court of the United States for taking the testimony of a witness named therein at any place within any district or Territory, the clerk of any court of the United States for such district or Territory shall, on the application of either party to the suit, or of his agent, issue a subpœna for such witness, commanding him to appear and testify before the commissioner named in the commission, at a time and place stated in the subpœna; and if any witness, after being duly served with such subpœna, refuses or neglects to appear, or, after appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpœna, such judge may proceed to enforce obedience to the process, or punish the disobedience, as any court of the United States may proceed in case of disobedience to process of subpœna to testify issued by such court. (R. S. § 868, U. S. Comp. St. § 1479.)

Subpœna duces tecum under a dedimus potestatem—When either party in such suit applies to any judge of a United States court in such district or Territory for a subpœna commanding the witness, therein to be named, to

appear and testify before said commissioner, at the time and place to be stated in the subpœna, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpœna, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpœna accordingly. And if the witness, after being served with such subpœna, fails to produce to the commissioner, at the time and place stated in the subpœna, any such paper, writing, written instrument, book, or other document, being in his possession or power, and described in the subpœna, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpœna, or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties. (R. S. § 869, U. S. Comp. St. § 1480.)

Witness under a dedimus potestatem, when required to attend—No witness shall be required, under the provisions of either of the two preceding sections, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpœna directed to him by virtue of either of the said sections, unless his fee for going

to, returning from, and one day's attendance at, the place of examination, are paid or tendered to him at the time of the service of the subpœna. (R. S. § 870, U. S. Comp. St. § 1481.)

Letters rogatory from United States courts—When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same, the said minister or consul shall indorse thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the Government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without objection as to the method of returning the same. When letters rogatory are addressed from any court of a foreign country to any circuit court of the United States, a commissioner of such circuit court designated by said court to make the examination of the witnesses mentioned in said letters, shall have power to compel the witnesses to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts. (R. S. § 875, amended Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 241, U. S. Comp. St. § 1486.)

Witnesses; subpœnas; may run into another district—Subpœnas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: Provided, That in civil causes the witnesses living out of the district in which the court is held do not

live at a greater distance than one hundred miles from the place of holding the same. (R. S. § 876, U. S. Comp. St. § 1487.)

Witnesses; subpœna; form; attendance under—Witnesses who are required to attend any term of a circuit or district court on the part of the United States, shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney. (R. S. § 877, U. S. Comp. St. § 1488.)

ACT MARCH 9, 1892 (27 Stat. 7 [U. S. Comp. St. § 1476]). An act to provide an additional mode of taking depositions of witnesses in causes pending in the courts of the United States.

Depositions; mode of taking—In addition to the mode of taking the depositions of witnesses in causes pending at law or equity in the district and circuit courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the State in which the courts are held. (Act March 9, 1892, c. 14, 27 Stat. 7, U. S. Comp. St. § 1476.)

7. THE HANDWRITING ACT

ACT FEB. 26, 1913 (37 Stat. 683 [U. S. Comp. St. § 1471]). An Act relating to proof of signatures and handwriting.

Comparison of handwriting—In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness. (Feb. 26, 1913, c. 79, 37 Stat. 683, U. S. Comp. St. § 1471.)

8. SUITS IN FORMA PAUPERIS (27 Stat. 252, amended 36 Stat. 866 [U. S. Comp. St. § 1626])

An Act to amend section one, chapter two hundred and nine of the United States Statutes at Large, volume twenty-seven, entitled "An Act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court," and to provide for the prosecution of writs of error and appeals in forma pauperis, and for other purposes.

Suits by poor persons; prepayment of or security for fees or costs; affidavit of poverty—Any citizen of the United States entitled to commence or defend any suit or action, civil or criminal, in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action, or a writ of error, or an appeal to the circuit court of appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court shall certify in writing that in the opinion of the court such appeal or writ of error is not taken in good faith, without being required to prepay fees or costs or for the printing of the record in the appellate court or give security therefor, before or after bringing suit or action, or upon suing out a writ of error or appealing, upon filing in said court a statement under oath in writing that because of his poverty he is unable to pay the costs of said suit or action or of such writ of error or appeal, or to give security for the same, and that he believes that he is entitled to the redress he seeks by such suit or action or writ of error or appeal, and setting forth briefly the nature of his alleged cause of action, or appeal. (Act July 20, 1892, c. 209, § 1, 27 Stat. 252, amended Act June 25, 1910, c. 435, 36 Stat. 866, U. S. Comp. St. § 1626.)

9. CERTAIN ADMIRALTY SUITS AGAINST THE UNITED STATES

[Public—No. 156—66th Congress.]

[S. 3076.]

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: Provided, That this Act shall not apply to the Panama Railroad Company.

Sec. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a

copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

Sec. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall become void

and be surrendered and canceled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

Sec. 4. That if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

Sec. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises.

Sec. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

Sec. 7. That if any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage,

or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: Provided, however, That nothing in this section shall be held to prejudice or preclude a claim of the im-

munity of such vessel or cargo from foreign jurisdiction in a proper case.

Sec. 8. That any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

Sec. 9. That the Secretary of any department of the Government of the United States, or the United States Shipping Board, or the board of trustees of such corporation, having control of the possession or operation of any merchant vessel are, and each hereby is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act.

Sec. 10. That the United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States or of the United States Shipping Board, or of such corporation, having control of the possession or operation of such vessel.

Sec. 11. That all moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States

Treasury to the credit of the Department of the Government of the United States, or of the United States Shipping Board, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

Sec. 12. That the Attorney General shall report to the Congress at each session thereof the suits under this Act in which final judgment shall have been rendered for or against the United States and such aforesaid corporation, and the Secretary of any department of the Government of the United States, and the United States Shipping Board, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

Sec. 13. That the provisions of all other Acts inconsistent herewith are hereby repealed.

Approved, March 9, 1920.

10. THE ADMIRALTY RULES OF PRACTICE
(29 Sup. Ct. xxxix)

(The Captions are Added for Convenience of Reference.)

Rules of Practice for the Courts of the United States in Admiralty and Maritime Jurisdiction, on the Instance Side of the Court, in Pursuance of the Act of the 23d of August, 1842, chapter 188.

1. **[Process on filing libel.]** No mesne process shall issue from the District Courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by

some discreet and disinterested person appointed by the court.

2. **[Process in suits in personam.]** In suits in personam, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a capias, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for, or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

3. **[Bail in suits in personam.]** In all suits in personam, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

4. **[Bond in attachment suits in personam.]** In all suits in personam, where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon

such bond or stipulation, summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

5. **[Bonds—Before whom given.]** Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

6. **[Reduction of bail—New sureties.]** In all suits in personam, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court, to be given, upon motion, and due proof thereof.

7. **[When special order necessary for warrant of arrest.]** In suits in personam, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof showing the propriety thereof.

8. **[Monition to third parties in suits in rem.]** In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the cus-

tody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

9. **[Process in suits in rem.]** In all cases of seizure, and in other suits and proceedings in rem, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody and shall cause public notice thereof and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

10. **[Perishable goods—How disposed of.]** In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement, to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

11. **[Ship—How appraised or sold.]** In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court,

upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned.

12. **[Material-men—Remedies.]** In all suits by material-men for supplies or repairs, or other necessaries, the libellant may proceed against the ship and freight in rem, or against the master or owner alone in personam.

13. **[Seamen's wages—Remedies.]** In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone in personam.

14. **[Pilotage—Remedies.]** In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone or the master alone in personam.

15. **[Collision—Remedies.]** In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone in personam.

16. **[Assault or beating—Remedies.]** In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be in personam only.

17. **[Maritime hypothecation—Remedies.]** In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs or other necessaries for the voyage, without any claim of marine interest, the libellant may proceed either in rem or against the master or the owner alone in personam.

18. **[Bottomry bonds—Remedies.]** In all suits on bot-

tomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property, in whosesoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be in personam against the wrong-doer.

19. **[Salvage—Remedies.]** In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed.

20. **[Petitory or possessory suits.]** In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

21. **[Execution on decrees.]** In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a fieri facias, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate, of the defendant or stipulators.

22. **[Requisites of libel of information.]** All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United

States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

23. **[Requisites of libel in instance causes.]** All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and, if the libel be in rem, that the property is within the district; and, if in personam, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights, in rem or in personam (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

24. **[Amendments to libels.]** In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time,

on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

25. **[Stipulation for costs by defendant.]** In all cases of libels in personam, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

26. **[Claim—How verified.]** In suits in rem, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and bona fide owner, and that no other person is the owner thereof. And, where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or, if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

27. **[Answer—Requisites of.]** In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer

shall be full and explicit, and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.

28. **[Answer—Exceptions to.]** The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and, if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

29. **[Default on failure to answer.]** If the defendant shall omit or refuse to make due answer to the libel upon the return-day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken pro confesso against him, and the court shall proceed to hear the cause ex parte, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

30. **[Effect of failure to answer fully.]** In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken pro confesso against the defendant, to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

31. [What defendant may object to answering.] The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for crime, or for any penalty or any forfeiture of his property for any penal offense.

32. [Interrogatories in answer.] The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libellant to such interrogatories the court may adjudge the libellant to be in default, and dismiss the libel, or may compel his answer in the premises, by attachment, or take the subject-matter of the interrogatory pro confesso in favor of the defendant, as the court in its discretion, shall deem most fit to promote public justice.

33. [How verification of answer to interrogatory obviated.] Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

34. [How third party may intervene.] If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the

court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

35. **[How stipulation given by intervenor.]** The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

36. **[Exceptions to libel.]** Exceptions may be taken to any libel, allegation, or answer for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

37. **[Procedure against garnishee.]** In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process in personam against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

38. **[Bringing funds into court.]** In cases of mariners' wages, or bottomry, or salvage, or other proceeding in rem, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession

of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

39. **[Dismissal for failure to prosecute.]** If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40. **[Reopening default decrees.]** The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy, and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

41. **[Sales in admiralty.]** All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

42. **[Funds in court registry.]** All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name

of the court, and shall not be drawn out, except by a check or checks signed by a judge of the court and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn and the date thereof.

43. **[Claims against proceeds in registry.]** Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene pro interesse suo for delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44. **[Reference to commissioners.]** In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and to examine the parties and witnesses touching the premises.

45. **[Appeals.]** All appeals from the district to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit; or in case no such rule or order be made, then within thirty days from the rendering of the decree.

46. **[Right of trial courts to make rules of practice.]** In all cases not provided for by the foregoing rules, the District and Circuit Courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47. **[Bail—Imprisonment for debt.]** In all suits in personam, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the state where an arrest is made upon similar or analogous process issuing from the state court.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished, in all cases where, by the laws of the state in which the court is held, imprisonment for debt has been, or shall be hereafter abolished, upon similar or analogous process issuing from a state court.

48. **[Answer in small claims.]** The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

49. **[Further proof on appeal.]** Further proof, taken in a Circuit Court upon an admiralty appeal, shall be by deposition, taken before some commissioner appointed by a Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such

deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and, in addition thereto, one day, Sundays exclusive, for every twenty miles' travel: Provided, that the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

50. **[Evidence on appeal.]** When oral evidence shall be taken down by the clerk of the District Court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

51. **[Issue on new facts in answer.]** When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be filed, unless allowed or directed by the court on proper cause shown. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

52. **[Record on appeal.]** The clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts on appeals, so that the same shall contain the following:

1. The style of the court.

2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof; all bail and stipulations; and, if any sale has been made, the orders, warrants, and reports relating thereto.

4. The libel, with exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.

7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.

8. Any order of the court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these; in which case, so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness and to copy the interrogato-

ries and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and, in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

2. The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

3. Hereafter, in making up the record to be transmitted to the circuit clerk on appeal, the clerk of the District Court shall omit therefrom any of the pleading, testimony, or exhibits which the parties by their proctors shall by written stipulation agree may be omitted; and such stipulation shall be certified up with the record.

53. **[Security on cross-libel.]** Whenever a cross-libel is filed upon any counter-claim, arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

54. **[Limitation of liability—How claimed.]** When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of

limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post-office, or otherwise, as the court, in its discretion may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

55. [**Proof of claims in limited liability procedure.**] Proof of all claims which shall be presented in pursuance

of said monition shall be made before a commissioner, to be designated by the court, subject to the right of any person interested to question or controvert the same; and upon the completion of said proofs, the commissioners shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expense), shall be divided pro rata amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

56. **[Defense to claims in limited liability procedure.]** In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

57. **[Courts having cognizance of limited liability procedure.]** The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf. When the said ship or

vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the district court of the district in which the said ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as hereinbefore provided. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

58. [**Appeals in.**] All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of the United States where such cases are or shall be pending in said courts upon appeal from the District Courts.

59. [**Right to bring in party jointly liable in collision case.**] In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against in personam, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation,

with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libellant.

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