Opinion of the court.

The case stated by the court brings this case within the principles established by the court in that.

The matter of fact decided by the court was that the defendant had possessed the property for the full period required by the laws of the State under all the conditions which those laws demand: a possession of thirty years under claim; a possession of ten years under just titles and in good faith. The map will show that the division-line between the De Lord and Saulet suburbs which had been established in 1763, and acquiesced in by the parties, passed through the upper corner of the lands of the Orleans Cotton Press, and did not touch the land in dispute, which is an accession in front of the said lots. The facts as found sustain, therefore, the defendant's plea, and the judgment of the Circuit Court is

AFFIRMED ACCORDINGLY.

BENTLEY *v.* COYNE.

1. Where a vessel has the wind free, or is sailing before or with the wind, she must keep out of the way of the vessel which is closehauled by the wind or sailing by or against it. Those closehauled on the wind, or sailing on the starboard tack, must keep their course.
2. But these established rules of navigation do not apply after a vessel advancing in violation of them is so near another vessel that by such other vessel's adhering to them a collision would be inevitable. A departure from them, under such circumstances, by a vessel otherwise not in fault, will not impair her right to recover for injuries occasioned by the collision.

THESE were appeals from the Circuit Court of the United States for the Eastern District of Michigan, in a libel and cross-libel for collisions of vessels on Lake Michigan; the questions involved being of fact chiefly, and the cases being submitted.

Mr. Hibbard, for the appellants; Mr. Newbury, contra.

Mr. Justice CLIFFORD delivered the opinion of the court.

Subject-matter of the controversy in this case was a collision between the schooner White Cloud and the bark Newsboy, which occurred on the twelfth day of November, 1862, off Twin River Point, or a little below, on the west shore of Lake Michigan. Owner of the White Cloud filed his libel against the bark Newsboy on the twenty-fifth day of May, 1863, and the owners of the bark filed their cross-libel against the schooner on the twenty-ninth day of September in the same year. Both cases were heard together in the District Court, and the decision was that the bark was in fault. Damages were accordingly awarded to the libellant in the case of the schooner in the sum of five thousand six hundred and seventy-three dollars and sixty-six cents, and the cross-libel was dismissed with costs. Circuit Court on appeal affirmed the respective decrees and the owners of the bark, as respondents in one case and as libellants in the other, appealed to this court.

1. Voyage of the schooner was from Buffalo to Chicago, and that of the bark was from Milwaukie to Buffalo. Capacity of the former was three hundred and eighteen tons, and that of the latter was five hundred and fifty-seven tons, and both were good vessels and had a full complement of officers and seamen. Testimony shows that both vessels were under full headway when the collision occurred, and that it resulted in great damage to the schooner. Among other injuries it broke the rail, stanchions, and bulwarks of the schooner from the fore-rigging to the main-rigging, and cut her outside planks down below the water-line as far as the bilge, and broke the clamps and ceiling down to the bilge-kelson. Damage was also done to the plank-sheer and deck-frame, and the capstan and some of the deck-plank were broken, the forestay-sail split and the butts of the deck-plank were started the whole length of the vessel.

Principal damage was on the starboard side of the schooner, showing conclusively that the blow was between the main and fore-rigging, on that side. She was in ballast, but the bark had a full cargo of wheat. Collision occurred about seven o'clock in the evening, but the proofs

show that it was not very dark, and the witnesses concur that there was no haze on the water and that the lights of vessels could be seen for several miles. Although it was cloudy, still the weather was pleasant and there was a good breeze. Speed of schooner was six or seven miles an hour, and that of the bark was nine miles. Weight of the evidence shows that the wind, though slightly baffling, varying occasionally perhaps a degree to the west, was southwest-by-west, and both vessels were under a full, or nearly full, press of canvas. Course of the schooner was south-half-east, and that of the bark was north-northeast, but she was not kept steady.

Considerable conflict exists in the testimony as to the course of the wind and of the schooner, but the better opinion, in view of the whole case, is, that the testimony of the master is correct. He came on deck twenty minutes before the collision, and he testified that the wind was about southwest-by-west, a little baffling, varying sometimes a point to the westward, and that the vessel was heading by the compass south-half-east, and we adopt those statements as satisfactorily sustained by the weight of the evidence.

Both vessels showed lights, and the proofs are full to the point that each saw the light of the other two or three miles before they came together. Obviously, therefore, it is a case of fault and not of inevitable accident—as the water was smooth and the vessels were sailing in a broad unobstructed thoroughfare. Undisputed fact also is that the schooner was sailing on the starboard tack, closehauled on the wind, and that the bark was on the larboard tack and had the wind free. Rule of navigation is, that where a vessel has the wind free, or is sailing before or with the wind, she must keep out of the way of the vessel which is closehauled by the wind or sailing by or against it, and the vessel on the starboard tack has a right to keep her course and the one on the larboard tack must give way or be answerable for the consequences.*

* St. John *v.* Paine, 10 Howard, 581; The Gazelle, 2 W. Robinson, 517; Woodrop Sims, 2 Dodson, 85; Ann Caroline, 2 Wallace, 544.

Strong effort is made by the respondents to take the case out of the operation of that rule by attempting to show that the schooner changed her course. Persons engaged in navigating vessels upon navigable waters are bound to observe the nautical rules recognized by law in the management of their vessels on approaching a point where there is danger of collision. Undoubtedly the same law which requires vessels having the wind free, or sailing on the larboard tack, to keep out of the way or give way, as the case may be, also imposes the correlative duty upon those closehauled on the wind, or sailing on the starboard tack, to keep their course, in order that the former may know the position of the object to be avoided, and not be baffled or led into error in their endeavors to comply with the requirement.*

Appellants show, beyond doubt, that the schooner changed her course, but they do not show that she changed it at a time or in any sense when or in which the law regards it as a fault. The rules of navigation mentioned do not apply to a vessel required to keep her course after the approach of the advancing vessel is so near that the collision is inevitable. An error committed by those in charge of a vessel under such circumstances, if the vessel is otherwise without fault, will not impair her right to recover for the injuries occasioned by the collision, for the reason that those who put the vessel in that peril are chargeable with the error, and must answer for the consequences which it occasions.

Evidence shows satisfactorily that the schooner kept her course until *the peril was impending and the collision inevitable*, and that the order, hard-a-starboard, was given by the master at the moment it occurred, "to ease off the blow and make it glancing." Such a change of course, at that moment, the District Court held was demanded as a means of self-preservation and was not a fault, and we entirely concur in that conclusion.

Objection is also taken to the decision of the court in confirming the report of the commissioner as to the amount of

* Steamship Co. *v.* Rumball, 21 Howard, 384.

the damages, but the objection is without merit and is hereby overruled. Decision of the District Court in the case of the cross-libel was also correct.

Decree of the Circuit Court

AFFIRMED WITH COSTS IN BOTH CASES.

PURCELL *v.* MINER.

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose, must bring himself within the same conditions, before he can invoke the aid of a court of equity.

That is to say, he must make full, satisfactory, and indubitable proof—

First. Of the contract, and of its terms; a proof which must show a contract leaving no *jus deliberandi*, or *locus pœnitentiæ;* and which cannot be made out by mere hearsay, or by evidence of the declarations of a party to mere strangers to the transaction, in chance conversation.

Secona. That the consideration has been paid or tendered. And even the payment of the price in part or in whole, will not, of itself, be sufficient for the interference of a court of equity, if the party have a sufficient remedy at law to recover back the money.

Third. That there has been such a part-performance of the contract that its rescission would be a fraud on the other party, and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract, and acquiesced in by the other party; a requisition which is not satisfied by proof of a scrambling and litigious possession.

PURCELL filed a bill against Coleman, Miner and wife, and others, in the Supreme Court of the District of Columbia, where the statute of frauds—enacting that all estates in lands made by parol only and not put in writing and signed by the parties making the same shall have the force and effect of estates at will only—is in force. The bill set forth that Coleman having a house in Washington, and he, Purcell, a farm in Virginia, "a trade" had been made between them; and the possession and key of the house delivered to him by Coleman, and full payment admitted by Coleman's