

should have been apparent; and we think there was no reason for apprehension until the ship light was seen closing in upon her. It is not the law that a steamer must change her course or must slacken her speed the instant she comes in sight of another vessel, no matter in what direction it may be. *The Earl of Elgin*, L. R. 4 P. C. L.; *The Potomac*, 8 Wall. 590; *Williamson v. Barrett*, 13 How. 101.

*The decree of the Circuit Court was right, and must be affirmed.*

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MITCHELL v. BOARD OF COMMISSIONERS OF LEAVENWORTH  
COUNTY, KANSAS.

Where, for the purpose of evading the payment of a tax on his money on deposit, which the law of a State required to be listed for taxation March 1 in each year, a party withdrew it Feb. 28 from a bank where it was subject to his check, converted it into notes of the United States, and deposited them to his general credit March 3, and the State court passed a decree dismissing the bill in equity by him filed to restrain the collection of the tax thereon,—*Held*, that the decree was correct; and that, although such notes were exempt from taxation by or under state or municipal authority, a court of equity would not use its extraordinary powers to promote such a scheme devised for the purpose of enabling a party to escape his proportionate share of the burdens of taxation.

ERROR to the Supreme Court of Kansas.

THIS case presents the following facts: Mitchell, the plaintiff, kept his account with a banking firm in Leavenworth. On the 28th February, 1870, he had a balance to his credit of \$19,350 in current funds, for which he that day gave his check, payable to himself in United States notes. They were paid to him. He immediately enclosed them in a sealed package, and placed them for safe keeping in the vault of the bank. On the 3d March he withdrew his package, and deposited the notes to his credit. This was done for the sole purpose of escaping taxation upon his money on deposit.

Personal property in Kansas, which includes money on deposit, is listed for taxation as of March 1 in each year. Mitchell did not list any money on deposit. The taxing officers, in due time, on discovery of the facts, added \$9,000 to his assessment on account of his money in bank. He asked the

proper authorities to strike off this added assessment. This was refused. A tax was thereupon in due form levied, and its collection threatened.

He then filed his bill in equity against the defendants, who are the proper authorities, to restrain the collection of this tax, alleging for cause, in substance, that as his bank balance had been converted into United States notes, and was held in that form on the day his property was to be listed, he could not be taxed on that account. The Supreme Court of Kansas, on appeal, dismissed the bill, for the reason, as appears by the opinion, — which in this case is sent here as part of the record, — that “a court of justice, sitting as a court of equity, will not lend its aid for the accomplishment of any such purpose.” Mitchell sued out a writ of error.

*Messrs. R. M. & Quinton Corwine and Mr. J. W. English* for the plaintiff in error.

The statute of Kansas imposing a tax on personal property provides that all property shall be listed as on the first day of March in each year. Its intent is to assess such property as is then *liable to taxation*. If there is none *on that day*, there is no *right* of taxation.

The object of all taxation is to compel lawfully taxable property of every kind to contribute its just proportion of taxes. It must, however, on the proper day of assessment, have an actual *bona fide* existence as such, in order that the law of the State may reach it.

The right of the plaintiff in error to withdraw his deposit and convert it into legal-tender notes is unquestionable. The money was his own, and he could invest it in United States bonds, legal-tender notes, mortgage-paper, or whatever securities he might elect.

The question here is, not what was his motive in making the investment, but what was the character of that investment on the day of his tax return with respect to its liability or non-liability to pay taxes to the State.

The facts show, that, on the day fixed by the statute for the assessment of the tax, the property of Mitchell consisted of notes of the United States. It was, therefore, exempt from taxation.

The presumption is, that the bank listed its taxable property, including this money exchanged by Mitchell. If so, the same money has been twice assessed. Even upon the theory of the Supreme Court of Kansas, this assessment is manifestly unjust.

No counsel appeared for the defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We think the decision in this case was correct. United States notes are exempt from taxation by or under state or municipal authority; but a court of equity will not knowingly use its extraordinary powers to promote any such scheme as this plaintiff devised to escape his proportionate share of the burdens of taxation. His remedy, if he has any, is in a court of law.

*The decree is affirmed.*

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### THE "SUNNYSIDE."

1. If a sailing vessel, when approaching a steamer, fails to adopt all reasonable precautions to prevent a collision, she will not be excused, even though she displays her proper signal-lights; and is entitled, in the absence of exceptional circumstances or special danger, to keep her course.
2. A collision occurred on Lake Huron, about three miles from the shore, near the head of St. Clair River, between a steam-tug and a sailing vessel. The former, heading east by north half north, waiting for a tow in conformity with a well-known usage in those waters, with her machinery stopped, but with her signal-lights burning as the law requires of a steamer under way, was drifting at the rate of a mile and a half per hour. The sailing vessel, with all her sails set and displaying her proper signal-lights, was heading north half west at a speed of nine miles per hour. *Held*, that it was the duty of the sailing vessel, in view of the special circumstances, to put up her helm and go to the right, or to put it down and suffer the steam-tug to drift past in safety; and, both vessels being at fault, the damages were equally apportioned between them.
3. The doctrine announced in *The Continental*, 14 Wall. 345, reaffirmed.

APPEAL from the Circuit Court of the United States for the Eastern District of Michigan.

The facts are stated in the opinion of the court.

*Mr. W. A. Moore* and *Mr. Ashley Pond* for the appellants,