

PHENIX INS. CO. v. LIVERPOOL & GREAT WESTERN STEAM CO.
(Limited.)¹

(Circuit Court, E. D. New York. June 30, 1883.)

SHIPPING—ORAL AGREEMENT—RECOVERY BACK OF FREIGHT MONEY.

The decree of the district court in the same case (12 FED. REP. 77) affirmed.

In Admiralty.

Beebe, Wilcox & Hobbs, for libelant and appellant.

Butler, Stillman & Hubbard, for respondent and appellee.

BLATCHFORD, Justice. The conclusion of the district court, and the reasons stated therefor, are entirely satisfactory to me. A decree must be entered dismissing the libel, with costs to the respondent, in the district court, taxed at \$68.84, and in this court to be taxed.

See the opinion of the district court in the same case, (reported as *Mehrbach v. Liverpool & Great Western Steam Co.*), 12 FED. REP. 77.

BUEL v. PIDGEON and Scow No. 1.¹

(Circuit Court, E. D. New York. July 18, 1883.)

COMMON CARRIER—PERIL OF THE SEAS—DAMAGE BY SWELL OF PASSING BOATS—
NEGLIGENCE.

The decree of the district court in the same case (5 FED. REP. 634) affirmed.

In Admiralty.

Sidney Chubb, for libelant and appellant.

Beebe, Wilcox & Hobbs, for claimant and appellee.

BLATCHFORD, Justice. The deposition of James Murphy in this court was regularly taken. I concur in the conclusions arrived at by the district court. Those conclusions are not varied by the new evidence on appeal. The libel is dismissed, with costs to the respondent and claimant in the district court, taxed at \$105, and in this court to be taxed.

See the opinion of the district court in the same case, (reported under the name of *Bell v. Pidgeon*), 5 FED. REP. 634.

¹Reported by E. D. & Wyllys Benedict, of the New York bar.

LEVY v. LACLEDE BANK.¹*(Circuit Court, E. D. Missouri. September 20, 1883.)*

1. PRACTICE—JURISDICTION—REMOVAL.

A party who is not entitled to bring his suit in this court originally, cannot bring it here by removal from a state court.

2. SAME.

Where it is doubtful whether this court or a state court has jurisdiction over a case, the doubt should be resolved in favor of the state court.

3. SAME—REMOVAL ACT OF 1875 CONSTRUED—A CHECK NOT A “BILL OF EXCHANGE.”

A check is not a bill of exchange, within the meaning of the first section of the removal act of 1875, and a suit brought upon a check by an indorsee against the maker cannot be removed from a state court to a circuit court of the United States, where the maker and payee are citizens of the same state.

4. SAME—PLEADING.

Where the maker and payee are citizens of different states, a failure to allege that fact is fatal.

Motion to Remand.

Garland Pollard, for plaintiff.

McKeeghan & Jones and Dyer, Lee & Ellis, for defendant.

MCCRARY, J., (*orally*.) This case is before the court upon a motion to remand. The suit was brought in the state court upon an ordinary bank check, dated St. Louis, February 2, 1883, payable to L. J. Sharpe or order, which check was signed to the order of Robert and George E. Day, and by them indorsed to the present plaintiff. The petition for the removal of the cause states that the plaintiff is a citizen of the state of Illinois, and the defendant a corporation of the state of Missouri, with the other allegations as to the amount in controversy, which are required by the removal act; but there is no allegation in the petition for removal as to the citizenship of the payee of this paper, under whom the plaintiff holds. The provisions of the removal act upon this subject are found in the first and second sections of the act of 1875. The provisions regarding removal are found in the second section; those regarding jurisdiction, in the first. The first section, among other things, in determining the jurisdiction of the court as to appeals, provides: “Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law-merchant, and bills of exchange.” The second section, providing for the removal of causes, declares in general terms that there shall be a right of removal in any case in which there shall be a controversy between citizens of different states,

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.