to rely for their defense upon the fact that the Shady Run was so rotten and unseaworthy as not to be entitled to any recovery. Having, as I must find, hit her bows with a blow more violent than justifiable in the ordinary handling of boats, whether new or old, I think she must be held answerable for the damage properly attributable to that negligent act, though the boat were old or weak. *The Granite State*, 3 Wall. 310. *The Syracuse*, *supra*.

The evidence satisfies me, however, that the repairs in this case went far beyond the natural effects of such a blow, even if the canal-boat was not staunch enough to resist ordinary handling. The bill of items of the repairs done shows nearly 800 feet of timber and plank used in these repairs, with numerous other items in proportion. This, as appears from the examination of the carpenter, was sufficient for many times the amount necessary to replace and repair the broken and injured parts.

The captain and agent of the claimants testify that on visiting the ship-yard while the repairs were going on they found the whole bow of the canal-boat taken out and in course of repair. This is denied by the carpenter and the owner of the boat. I am entirely satisfied from the evidence that the repairs were very greatly in excess of the injury done. The evidence is perhaps insufficient to determine exactly the proper amount. I shall allow provisionally what I gather from the present evidence, viz.: one-third of the bill of repairs; one-third of the demurrage claimed; one-half the amount claimed for the broken lines; and the whole of the bills for towage and dockage, as they would have been necessary in any event. These together amount, with interest to date, to $72.20, for which a decree may be entered, but without costs, as the amount of repairs claimed is evidence of bad faith on the part of the libelant; except, however, that if either party is dissatisfied with my estimate of the damages, they may take an order of reference to compute the amount, at the risk of paying the expenses of the reference if not successful in obtaining a more favorable result.

GRONN v. WOODRUFF and others.

(*District Court, S. D. New York.* January 8, 1884.)

1. SHIPPING—ASSIGNMENT OF BILL OF LADING—CHARTER-PARTY.
   A merchant purchasing goods on board a vessel after arrival, and taking an assignment of the bill of lading, is bound by its terms, but not by the terms of the charter-party, any further than it is adopted by the bill of lading.
2. SAME—BILL OF LADING—DEMURRAGE—REASONABLE TIME.
   Where the bill of lading provides no stipulated days for the discharge, the merchant is bound only to reasonable diligence, according to the custom of the port.

3. SAME—REMOVAL OF VESSEL FROM BERTH.

Where a merchant procures the removal of a vessel from a berth already secured to another, for his own benefit, pays the cost of removal, and procures the cargo to be discharged within the average time allowed by the custom of the port from the day when she was first ready to discharge, *held*, no demurrage can be claimed.

In Admiralty.

Butler, Stillman & Hubbard, for libelant.

Beebe, Wilcox & Hobbs, for respondents.

BROWN, J. The bark Spess arrived at New York on January 3, 1881, with 265 tons of salt in ballast from Lisbon, upon a bill of lading which was transferred to the respondents. They entered the salt at the custom-house, paid the freight, and directed the vessel to Atlantic docks, where the vessel arrived on January 4th, and gave notice of her readiness to discharge on the 5th. On that day, at the respondents' request, the master consented to go to Twenty-third street and unload, where she was taken at the respondents' expense, and arrived at about 4 P. M. One wagon load was delivered on the evening of the 6th, and the discharge was ended early on the 15th, and might have been completed had the ship desired on the evening of the 14th. The bill of lading provided no stipulated days for the discharge, and it referred to the charter-party only as regards the payment of freight. The provisions of the charty-party, therefore, as respects the rate of delivery, did not bind the respondents. *112 Sticks of Timber*, 8 Ben. 214; *Kerford* v. *Mondel*, 5 Hurl. & N. Exch. 931. It was proved that 1,000 bushels, or 33 tons, per day was a reasonable and customary rate of discharge. This would leave eight working days for the discharge of this cargo.

Although the vessel had given notice that she would be ready to discharge on the 5th, I think the evidence shows that she did not get a permit, or tubs, and did not get ready, so that she could actually commence the discharge, before the 6th; and it does not appear that the removal from Atlantic docks to Twenty-third street, which occupied only some three hours, made any difference in her want of preparation. But even if the vessel had been ready upon the 5th, deducting Sunday, and the rainy days in the mean time, only eight working days were consumed in the discharge. Although on several of the working days considerably more than 33 tons per day were in fact discharged, I think the merchant cannot be held liable, in the absence of any stipulated lay days or agreement for dispatch, provided he gets the whole cargo discharged within the time which custom allows. As this time was not exceeded, the libel must be dismissed, with costs.

BOYD v. GILL and others.

CUTTER v. WHITTIER and others.

NOTT v. CLEWS and others.

PERKINS v. DENNIS and others.

(*Circuit Court, S. D. New York.* December 14, 1883.)

1 REMOVAL OF CAUSE—CONTROVERSY WHOLLY BETWEEN CITIZENS OF DIFFERENT STATES.

A controversy is not the same thing as a cause of action; and a suit against two persons jointly does not, merely because it might have been brought against either separately, involve a controversy wholly between the plaintiff and one of them, within the meaning of the act authorizing the removal of a suit to the federal courts where there is a controversy wholly between citizens of different states.

2. SAME—SEPARATE CONTROVERSIES.

When, however, the separate causes of action could both be pursued against different defendants, and settled independently of each other, the suit, even though it contain a joint cause of action also, involves separate controversies and falls within the term of the act.

3. SAME—BILL AGAINST FRAUDULENT TRUSTEES.

A cause of action against several trustees for the fraudulent misappropriation of trust funds, being *ex delicto* and involving, therefore, no right of contribution between the defendants, may in equity as well as at law be pursued either jointly or severally; and a bill in equity founded upon such a claim, and demanding a joint and several accounting by the trustees, involves such a separate controversy with each defendant that if one of the defendants is a non-resident the cause is removable.

4. SAME—FILING OF PETITION BEFORE TRIAL.

The trial of a cause upon demurrer is a trial within the meaning of the act requiring a petition for the removal of a cause to be filed before the trial thereof.

On Motion to Remand.

H. F. Averill and *Geo. F. Betts*, for plaintiff in each case.

Sewell, Pierce & Sheldon, for defendant Plumb.

Sherman & Sterling, for defendant Whittier.

Abbot Bros., for defendant Clews.

Arnoux, Ritch & Woodford, for defendant Dewing.

Before WALLACE and BROWN, JJ.

WALLACE, J. These cases and the case of *Langdon* v. *Fogg*,[1] decided by Judge BROWN, but in which he ordered a reargument, have been heard together, the questions being substantially identical, upon motions to remand the suits to the state court. In each case the action was brought in the state court by a resident plaintiff against a non-resident defendant and several resident defendants, and was removed to this court upon the petition of the non-resident defend-

[1] 18 FED. REP. 5.