gratuity, with $82.65 costs in the district court, as taxed, and costs in this court to be taxed; and in the second suit the libel must be dismissed, with $85.35 costs in the district court, as taxed, and costs in this court to be taxed.

---

## LIVERPOOL & GREAT WESTERN STEAM CO. *v.* SAITTA.[1]

(*Circuit Court, E. D. New York.* June 23, 1884.)

COMMON CARRIER—WAREHOUSEMAN—DELIVERY—PERISHABLE CARGO—USAGE.
The decree of the district court in the same case (17 FED. REP. 695) affirmed.

In Admiralty.

*Beebe, Wilcox & Hobbs*, for libelant and appellee.

*Charles E. Crowell*, for claimants and appellants.

BLATCHFORD, Justice. I concur fully in the opinion of the district judge in this case as to the facts and the law. The libelants are entitled to a decree for $841.20, with interest from December 31, 1881, and their costs in the district court, taxed at $201.95, and their costs in this court to be taxed.

See the opinion of the district court in the same case, (reported as *Liverpool & Great Western Steam Co.* v. *Suitter and others*,) 17 FED. REP. 695. —[REP.

---

## DE GRAU *v.* WILSON.

(*Circuit Court, E. D. New York.* June 23, 1884.)

BILL OF LADING—COMMON CARRIER—WAREHOUSEMAN—DESTRUCTION OF GOODS BY FIRE—BURDEN OF PROOF—NEGLIGENCE.
The decree of the district court in the same case (17 FED. REP. 698) affirmed.

In Admiralty.

*R. P. Lee*, for libelants and appellants.

*Foster & Thomson*, for respondents and appellees.

BLATCHFORD, Justice. The conclusions of fact and of law arrived at by the district judge in his decision seem to be warranted by the evidence. He had the advantage of seeing the witnesses and hearing their testimony. The case is one depending largely on the credibility of witnesses and the ascertainment of facts. The additional proofs taken in this court do not vary the case. There must be a decree dismissing the libel, with costs to the respondents in the district court, taxed at $114.43, and in this court to be taxed.

See the opinion of the district court in the same case, (*De Grau* v. *Wilson*,) 17 FED REP. 698.—[REP.

[1] Reported by R. D. & Wyllys Benedict, of the New York bar.

## BURGER v. GRAND RAPIDS & I. R. CO.

*(Circuit Court, D. Indiana. 1884.)*

1. JURISDICTION OF CIRCUIT COURT—CONSOLIDATED RAILROAD CORPORATION—CITIZENSHIP.
   A railroad corporation composed of two corporations created in the state of Michigan and one created in the state of Indiana, consolidated and merged into a single corporation under the laws of both states, owning and operating a single continuous line of road from a certain point in one state to a point in the other, is a citizen of the state of Indiana as well as of Michigan, and cannot be sued by a citizen of Indiana in the circuit court of the United States for the district of Indiana.
2. SAME—CAUSE OF ACTION ARISING IN MICHIGAN.
   In such an action the fact that the injury complained of was suffered in Michigan is not material to the question of jurisdiction. *Horne* v. *Boston & M. R. R. Co.* 18 FED. REP. 50, followed.

Demurrer to Plea in Abatement.

*D. M. Ninde*, for plaintiff.

*A. A. Chapin*, for defendant.

WOODS, J. The plaintiff complains of personal injuries caused by the negligence of the defendant, alleging, among other things, that the defendant is a corporation organized under the laws of Michigan and a citizen of that state; that the injury complained of was received in that state; and that the plaintiff is a citizen and resident of Indiana. The plea in question is to the effect that the defendant is also a corporation organized under the laws of Indiana, and therefore a citizen of that state as well as of Michigan, being a consolidated body under the laws of both states, composed of two corporations created in Michigan and another created in Indiana, and in 1857 consolidated and merged into a single company under the name of "The Grand Rapids & Indiana Railroad Company," which owns and operates a single and continuous line of railroad from Ft. Wayne, Indiana, to Grand Rapids, Michigan. The precise question presented by this plea, I believe, has never been authoritatively decided, though it has sometimes been stated in opinions delivered in analogous cases, and in one instance, at least, an opinion upon it has been expressed. See *Uphoff* v. *Chicago, St. L. & N. O. R. Co.* 5 FED. REP. 545; *Nashua & L. R. Corp.* v. *Boston & L. R. Corp.* 8 FED. REP. 458; S. C. 19 FED. REP. 804. In the latter case the plaintiff, being a consolidated company composed of New Hampshire and Massachusetts corporations, brought an action in the federal court in and against another corporation of the latter state, and, in discussing the question of jurisdiction, when the case was first under consideration, NELSON, J., said:

"In this case it seems that the defendant corporation might go into New Hampshire, and there sue the plaintiff as a New Hampshire corporation in the federal court, although it could not bring such suit in the district of Massachusetts against the New Hampshire corporation, because no service upon the New Hampshire corporation as such could be got in this district, if for no other reason. It has been determined by Judge LOWELL that in some cases