THE WEST BROOKLYN.

BROWN *et al.* *v.* THE WEST BROOKLYN.

(Circuit Court of Appeals, Second Circuit. December 14, 1891.)

COLLISION—FERRY-BOAT AND TUG—OBSTRUCTION OF FERRY SLIPS.

A tug has no right unnecessarily to maneuver at the entrance of the slip of a ferry-boat so as to obstruct the latter while making her slip, and a ferry-boat, which has given in season the proper signals to indicate her approach to a tug so situated, is justified in assuming that the tug will get out of the way, and is not liable, if collision ensue.

In Admiralty. Appeal from a decree of the circuit court of the United States for the southern district of New York. The district court for said district dismissed the libel, (45 Fed. Rep. 60,) and libelant appealed to the circuit court, which affirmed *pro forma* the decree of the district court, and libelant appealed to this court.

The ferry-boat West Brooklyn was entering her slip between piers 2 and 3, East river. The pilot of the ferry-boat had previously observed the tug R. S. Garrett backing towards the slip, and had given her two whistles to indicate that the ferry-boat would go astern of the tug, and, just before entering her slip, she gave a danger signal. The Garrett had been moored alongside pier 4, with her head up-stream, inside of another tug, which prevented the ferry-boat from seeing her at a distance. Receiving orders for Harlem, the Garrett cast off and backed to get out under the stern of the other tug. The stern of the Garrett struck the starboard paddle-wheel of the ferry-boat, after the latter was half-way in her slip.

Carpenter & Mosher, (*Joseph F. Mosher*, of counsel,) for appellants.

Burrill, Zabriskie & Burrill, (*J. Archibald Murray*, of counsel,) for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. We think the collision in this case is to be attributed solely to the fault of the tug. The ferry-boat was excusable in not discovering the tug before she did, and when she did discover her it was too late to reverse without danger of injury to the tug, more by doing so than by proceeding with her engines stopped. As soon as she did discover the tug, she gave proper signals to indicate her approach, and immediately followed them with danger signals. If those in charge of the tug had been reasonably vigilant they would have observed the ferry-boat, even before she gave the signals; and there was sufficient time after the signals were given for the tug to go ahead and avoid the ferry-boat, if an order to do so had been promptly given and obeyed. We accept the version of the occurrence substantially as it is given by the witnesses Denoyelles and Little. We agree with the learned district judge that the tug had no right unnecessarily to maneuver at the entrance of the slip of the ferry-boat so as to obstruct the ferry-boat while making her slip, and that the pilot of the ferry-boat was justified in assuming that the tug would go ahead as soon as it was apparent that otherwise a collision would probably ensue.

The decree is affirmed, with interest and the costs of the appeal.

O'DONNELL v. ATCHISON, T. & S. F. R. CO.

(Circuit Court, S. D. Iowa, C. D. March 8, 1892.)

1. REMOVAL OF CAUSES—APPEARANCE IN STATE COURT—EFFECT.
An appearance in the state court to file a petition and bond for removal does not waive the right to present in the federal court any question of jurisdiction which might have been urged in the state court, and concerning which the federal court has power to act.

2. SAME—WAIVER OF DEFECTIVE SERVICE.
Where service of notice of commencement of action in the Iowa courts could have been made upon defendant in the district to fill every requirement of the state statutes, a general appearance by defendant in the federal court, after removal of the cause, is a waiver of any defect of service on him.

3. SAME—VENUE—DISCRETION OF COURT.
Polk county, Iowa, is in the central division of the circuit court for the southern district of Iowa, while Lee county is in the eastern division. Defendant railroad company, sued in the state court in Polk county, had the right, by the Iowa statute, to have the place of trial transferred to Lee county. *Held*, that defendant, by procuring the removal of the cause from the state court, and in filing the transcript in the central division of this court, was precluded from asserting that the cause was pending in the wrong division, and that it has the right to demand a removal to the eastern division.

4. SAME.
The fact that defendant is a Kansas corporation, whose railroad touches only Lee county, in Iowa, and that the cause of action did not grow out of nor was it connected with any office or agency within the central division, is not sufficient to impel to action the discretion of the court to grant a transfer.

At Law. On petition for change of venue and plea to jurisdiction. Overruled.

Cole, McVey & Cheshire, for plaintiff.

G. Lathrop, J. D. M. Hamilton, and *J. C. Davis*, for defendant.

WOOLSON, District Judge. This is an action for personal injuries brought into this court on removal from state court. The petition, originally filed in the district court of Polk county, Iowa, states as cause of action that defendant is a Kansas corporation, whose line of operated railway extends through Colorado, Kansas, Iowa, and other states; that in July, 1891, plaintiff's decedent, at Pueblo, Colo., while exercising due care on his part, and while employed by defendant in the operation of its railway, was killed, by reason of the negligence of the defendant. Service of notice was made on defendant by serving notice upon "S. M. Osgood, general agent for the state of Iowa of the defendant, Atchison, Topeka, and Santa Fe Railroad Company, at his office, and the general office of defendant company, in the city of Des Moines, Polk county, Iowa." Upon the first day of the term to which the notice was returnable, defendant filed in said Polk county district court its petition and bond for removal to the federal court, and said court ordered removal accordingly. Upon the day on which the certified pleadings, etc., herein were filed in this court, the attorneys for defendant filed herein in this court a paper entitled "*præcipe* for appearance," the body of which is as follows: "The clerk of said court will please enter our appearance for defendant in the above-entitled action, and docket the same on proper docket,"—which *præcipe* was duly signed by all the attorneys whose