

clares that no other lights than those mentioned in the articles of the act relating to lights shall be carried, and none of those articles mention flash-lights; and section 2 of the act repeals all laws and parts of laws inconsistent with those articles. Moreover, the act of 1885, establishing international rules for sea-going and coasting vessels, omits section 4234 of the Revised Statutes. It follows, therefore, that if the schooner Bronson did not display a flash-light on the approach of the Lepanto, she was not in fault on that score. The decree of the circuit court is affirmed, with interest, and costs of the appeal to be paid by appellant.

THE F. W. VOSBURGH.

THE CIAMPA EMILIA.

CIAMPA v. THE F. W. VOSBURGH.

(Circuit Court of Appeals, Second Circuit. January 13, 1892.)

1. COLLISION—TUGS AND TOWS—VESSEL AT ANCHOR—CHANGE OF COURSE.

A tug, with a ship in tow on a hawser, gave a rank sheer in an attempt to pass from one side to the other of a dredge anchored in midstream, when so near the latter that, although the ship instantly put her helm hard over to follow the tug, she came in collision with the dredge. *Held*, that the tug was liable.

2. APPEALS—PARTY NOT APPEALING CANNOT BE HEARD.

Where libellant has not appealed, he cannot contend in this court that certain items of his loss were improperly disallowed in the court below.

41 Fed. Rep. 57, affirmed.

In Admiralty. Appeal from the circuit court of the United States for the eastern district of New York. The district court sustained the libel against the tug, (41 Fed. Rep. 57,) and claimants appealed to the circuit court, which affirmed *pro forma* the decree of the district court, and claimants appealed to this court. Affirmed.

See 46 Fed. Rep. 866.

*Hyland & Zabriskie*, (Josiah A. Hyland, of counsel,) for appellants.

*Wing, Shoudy & Putnam*, (Charles C. Burlingham, of counsel,) for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

WALLACE, Circuit Judge. This is a libel brought by the owner of the ship Ciampa Emilia to recover damages sustained by a collision which took place in the Delaware river, at Mifflin bar, November 2, 1888, with the dredge Arizona, then anchored in mid channel. The ship at that time was in tow of the tug F. W. Vosburgh, going northward, bound for Philadelphia. The dredge was anchored on the bar by spuds. She was about 92 feet long and about 34 feet wide. The ship was being towed on a hawser about 250 feet long. The tide was

strong flood. The libel avers that, when very near the dredge, the Vosburgh took a rank sheer to port, and undertook to pass to the westward of the dredge, and, although the ship instantly put her wheel hard a-starboard, and went off to port several points, she was so close to the dredge that she fetched up on one of the lines by which it was anchored, and her port bow was brought into collision with the easterly corner of the dredge. The Vosburgh asserts that the collision was brought about solely by the carelessness of those in charge of the ship, in that they did not properly steer her to follow the tug; that the tug had shaped her course to pass to the westward of the dredge in due season, but that when she had arrived about opposite, and about 60 or 70 yards to the westward of the dredge, the ship took a sudden rank sheer to eastward, and thereby brought her port bow into collision with the dredge. The learned district judge, who decided this cause in the court below, accepted the theory of the libellant, and concluded that the collision arose from the attempt of the Vosburgh to pass from the east to the west side of the dredge when so near that the ship, while following the tug, brought up upon the line of the dredge. The case turns wholly upon questions of fact. The claimants have taken the testimony of two witnesses, that of Dasey, master of the tug M. W. Hunt, and Tees, the cook of that tug, who were not examined in the district court. The tug Hunt delivered a message to the ship, and then proceeded alongside, not fast to her, but keeping close by her on her port side, until the collision took place. We are satisfied that the decree of the district court was right. It will not be useful to make any extended reference to the proofs. It is proper to say, however, that we attribute very little weight to the testimony of Bacon, the pilot of the Canonicus, and none at all to the testimony of the two new witnesses, Dasey and Tees. Dasey's testimony is completely overthrown by his previous affidavit of November 10, 1888, in which he stated, in substance, that the collision was caused by the rank sheer to port made by the Vosburgh. The circumstance that their tug struck the westwardly corner of the dredge when the ship struck the easterly corner is significant. Why did not their tug follow the Vosburgh, if the Vosburgh was a hundred feet to the westward of the dredge, and the ship suddenly sheered more than that distance to the eastward? We accept the evidence adduced by the ship, all on board of her having been examined, as satisfactory to the fact that she was trying to follow the tug at the moment of the collision, and was not guilty of any carelessness. The libellant insists that certain items of loss were improperly disallowed in the court below. As the libellant has not appealed, we cannot notice this contention. The decree below is affirmed.

## CAMPBELL v. DULUTH, S. S. &amp; A. RY. CO.

(Circuit Court, D. Minnesota. April 7, 1892.)

**1. CIRCUIT COURTS—JURISDICTION—RESIDENCE OF DEFENDANT.**

Under Act Cong. March 3, 1887, § 1, as amended by Act Aug. 13, 1888, citizens or subjects of foreign states can sue citizens of the United States in the federal courts only in the district in which the latter reside.

**2. SAME—CORPORATIONS—WHERE SUABLE.**

A corporation is conclusively presumed to be a resident and inhabitant of the state under whose laws it is created, and an employe, a citizen of a foreign state, cannot maintain an action for damages against a railroad in a state other than that under whose laws it was organized, merely because its agents are there found engaged in its business.

At Law. Action by William Campbell against the Duluth, South Shore & Atlantic Railway Company for damages for personal injuries. Cause dismissed.

Statement by SANBORN, Circuit Judge:

The plaintiff, a subject and citizen of the dominion of Canada, brought an action at law in the Minnesota district against the defendant, a corporation created and existing under the laws of Michigan, to recover damages for injuries received by him at Bagdad, Mich., while operating defendant's trains as a brakeman. It appears from the amended complaint; which we permit to be filed in order fully to present the question plaintiff's counsel desires to raise, that "the defendant owned and operated a railroad running through Bagdad, Mich., and Wisconsin, and into Duluth, Minn., and at Duluth Minn., said defendant maintains a ticket and freight office, with an agent thereat, who makes contracts there for defendant for both passenger and freight business, and defendant transports both passenger and freight so contracted for in its cars both to and from Duluth, from and to its other stations on its line of railway in Wisconsin and Michigan." The summons was served on the defendant's ticket agent at Duluth, and, under the statutes of Minnesota and the decisions of the courts of that state, the service would have been sufficient to have given a state court jurisdiction of the defendant corporation, if the action had been pending in such court. The action comes before us on an order to show cause why the service of summons should not be set aside, and the action dismissed, upon the ground that this court has no jurisdiction of the action, because the defendant is not an inhabitant of this district.

*Larrabee & Lammons*, for plaintiff.

*W. W. Billson*, for defendant.

Before SANBORN, Circuit Judge, and NELSON, District Judge.

SANBORN, Circuit Judge, (after stating the facts.) The first section of the act of congress of March 3, 1887, (24 St. p. 552,) as amended by the act of August 13, 1888, (25 St. p. 433,) defines the jurisdiction of the circuit courts in suits of a civil nature, at law or in equity, originally brought in those courts. Aside from the restriction as to the amount