Chinese laborers to this port, and attempted to land them, does not charge a crime.

I have had some doubts as to whether the pendency of a suit in a court of the United States for another district can be pleaded in abatement of a suit in this court. The point has not been expressly decided. The opinion is expressed that there is no difference in principle between such a suit and one in the court of another state. 1 Fost. Fed. Pr. § 129. And it has been held in the United States circuit court in Wisconsin that the pendency of an action in a state court of Iowa, where sufficient property had been attached to satisfy the demand, was a ground for the abatement of the suit in the former court. Lawrence v. Remington, 6 Biss. 44. Upon these authorities, I conclude that no jurisdiction exists in a case like this, where there has been a seizure and a release on bond in the court of the other district.

The exceptions are allowed.

THE MASCOT.

ROSE BRICK CO. v. THE MASCOT.

(Circuit Court of Appeals, Second Circuit. August 1, 1893.)

TOWAGE—NEGLIGENCE OF TUG—FAILURE TO AVOID KNOWN OBSTRUCTION.

A tug is guilty of negligence in running its tow upon an obstruction which competent and experienced pilots would have avoided. 48 Fed. Rep. 917, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by the Rose Brick Company against the steam tug Mascot for negligence in towing libelant's barge Roseton. The district court rendered a decree for libelant. 48 Fed. Rep. 917. Respondent appeals. Affirmed.

Jos. F. Mosher, for appellant.

Geo. B. Adams, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We are satisfied upon the evidence in the record that there was an obstruction in the canal, inside the buried rock, which was known to exist by those conversant with the condition of the channel, and which ought to have been known to those in charge of the tug. In towing the libelant's canal boat upon an obstacle which competent and experienced pilots would have avoided, the tug was guilty of negligence.

The decree is affirmed, with interest and costs.

COVER v. CLAFLIN et al.

(Circuit Court, S. D. New York. July 3, 1893.)

CIRCUIT COURTS—JURISDICTION—SUIT BY FOREIGN TRUSTEE.

Where, pursuant to 1 Rev. St. Ohio, § 6344, a conveyance in fraud of creditors has been declared void by an Ohio court, and a trustee appointed, to "proceed by due course of law to recover" the property, and administer it for the benefit of creditors, such trustee is vested with the right of property, and may maintain a suit to recover the same in a federal court for another state.

In Equity. Suit by John F. Cover, trustee, against John Claflin and others. On demurrer to the complaint. Demurrer overruled.

Rush Taggart and D. D. Duncan, for plaintiff.
S. F. Kneeland, for defendants.

WHEELER, District Judge. By a statute of Ohio, conveyances in fraud of creditors may be declared void, and a trustee appointed, who "shall proceed by due course of law to recover" the property, and administer it for the benefit of creditors. 1 Rev. St. § 6344. The demurrer here raises the question whether such a trustee in Ohio can maintain a suit for the recovery of such property in this court. Such proceedings appear to vest the right to the property in the trustee. Conrad v. Pancost, 11 Ohio St. 685; Thomas v. Talmadge, 16 Ohio St. 438; Shorten v. Woodrow, 34 Ohio St. 648; Union Bank of Chicago v. Kansas City Bank, 136 U. S. 223, 10 Sup. Ct. Rep. 1013. Having this right, the trustee could sue to enforce it anywhere that he could to enforce his own proper rights, the same as an assignee in bankruptcy could. Lathrop v. Drake, 91 U. S. 516; Claflin v. Houseman, 93 U. S. 130. Demurrer overruled.

DUBUQUE NAT. BANK v. WEED et al.

(Circuit Court, W. D. Wisconsin. June 4, 1892.)

1. ASSIGNMENT FOR BENEFIT OF CREDITORS—WHAT CONSTITUTES.

A deed of a portion of a debtor's realty, and a bill of sale of a portion of his personalty, to the presidents of certain banks, taken with a defeasance back, showing that they were given as collateral security for promissory notes to the banks, do not constitute a voluntary assignment for the benefit of creditors with preferences, under the laws of Wisconsin, in that there is no creation of an active trust.

2. MORTGAGES—WHAT CONSTITUTE—DEFEASANCE.

Such conveyances constitute a mortgage on the properties, and the fact that the defeasance was on a separate paper is immaterial.

3. SAME—MERGER.

Where mortgages were subsequently given to each of the banks on different portions of the same property, for convenience in securing each bank separately, the former conveyances were merged in the subsequent mortgages.