

ship, nor any persons connected with the basin, or the shipping there, apprehended any injury from lack of due fastening before the accident. She had lain moored there for four months, and apparently well moored for any gale that was to be reasonably expected.

In the case of *The Johannes*, 10 Blatchf. 478, Fed. Cas. No. 7, 332, which, upon a cursory reading, appears to be somewhat similar to this case, the sole ground on which the ship was found in fault was, that she had out no breast line forward, and consequently swayed back and forth. On examining the record in that case, I find abundant testimony that such fastening by breast lines was usual, and considered necessary. The decision of the district court was based solely upon that ground; and on that ground alone, the judgment was affirmed in the circuit court.

In the present case, besides the hawser chain, there were two breast chains out forward, one of them leading straight across in the usual way. They were both fastened to spiles on the dock, and on board the ship to the cavil. There were thus three chains forward, to hold the ship in place. There is no evidence that the cavil was defective. But after the spile gave way, it was scarcely to be expected that against such a gale the cavil alone should hold the ship. No usual precaution is shown to have been omitted; and hence, though the cases are few in which I have been led to ascribe disaster to inevitable accident, this case, I think, fairly comes within that description; at least, as appears to me, she was without fault. *The Morning Light*, 2 Wall. 550; *The Grace Girdler*, 7 Wall. 196, 203; *The Mabey and Cooper*, 14 Wall. 215; *The Austria*, 9 Fed. 916, 14 Fed. 298; *The Worthington and Davis*, 19 Fed. 836; *Neel v. Blythe*, 42 Fed. 457; *The Olympia*, 52 Fed. 985; *The Transfer No. 2*, 56 Fed. 313.

Libel dismissed, with costs.

THE DIMITRI DONSKOI.

THE HEIPERSHAUSEN.

THE B. T. HAVILAND.

EMPEROR OF ALL THE RUSSIAS v. THE HEIPERSHAUSEN and
THE B. T. HAVILAND.

(District Court, S. D. New York. March 1, 1894.)

1. COLLISION—ANCHORED VESSEL—LAUNCH AT END OF BOOM — LIGHTS — PROJECTION OF BOOM.
A Russian man of war, the *D. D.*, was lying at anchor in New York harbor on proper anchorage ground, and was exhibiting proper lights. Her steam launch was made fast to a boom nearly 60 feet long, projecting from the side of the ship. During the night the launch was run into and sunk by a tow which the evidence showed was in charge of defendant tugs. *Held*, that the launch was not required to exhibit a light of her own, that the projection of the boom was not unusual or unreasonable, and that the two tugs were liable for the collision.
2. COSTS AND FEES—EXPENSES OF IDENTIFYING COLLIDING VESSEL.
Expenses of identifying a colliding vessel are not warranted as an item of recovery in a collision case.

In Admiralty. Libel for collision.

Goodrich, Deady & Goodrich, for libelant.

Carpenter & Mosher, for claimants.

BROWN, District Judge. During the Columbian Naval Exhibition of June, 1893, the Russian man of war, Dimitri Donskoi, lay at anchor in the North river, off Forty-Eighth street. At about 12:15 a. m. on the morning of June 12th, while thus lying at anchor in the ebb tide, with her steam launch resting upon the water, but suspended from her boom, which projected nearly 60 feet from the ship's starboard side, and was about 16 or 17 feet above the water, the launch was struck and sunk by some tow coming down the river between the ship and the New York shore, and her boom at the same time was carried round against the captain's gig, doing that also some damage. The above libel was filed to recover for the loss, claiming that it was caused by the tow of which the Heipershausen and Haviland were in charge.

The defendants contend that the ship was not anchored in a proper place; that the projection of her boom was negligent and unjustifiable; that the launch showed no light to indicate her position; and that the identity of the tow that caused the damage is not sufficiently established.

The place of anchorage is proved by a great preponderance of evidence on the libelant's behalf, showing that she was anchored on the prescribed anchorage ground, from 700 to 900 feet from the New York shore. The ship exhibited proper lights. No rule required the launch to exhibit any additional light; nor did the boom project an unusual or unreasonable distance for such a ship, nor beyond the distance of 20 yards, which is the distance prescribed by statute for vessels passing each other. 1 Rev. St. N. Y. p. 684, § 7.

The evidence shows that the tow of the Heipershausen came down between this man of war and the New York shore at about the time when this accident happened, and that at least one of the boats in her tow came in collision with the boom and received some damage from it. In the face of this fact, and of the other testimony, neither the mere circumstance that the drifting of this tow against the chain, as charged, is not proved, nor the other slight circumstances of supposed difference, are sufficient to create a reasonable doubt that it was the Heipershausen's tow that caused the damage to the launch and the gig, in the absence of proof of any other tow coming in that passage at about the same time. I do not understand, in fact, how it was possible that the proved collision with the boom could have occurred without striking the launch also, unless the launch had been already run into and capsized by the forward boats of the same tow. It is immaterial, as regards the liability of the claimants' tugs, by which of the boats in the tow the launch or boom was struck.

Not finding any reasonable doubt as to the identity of the tow, the libelant is entitled to a decree, with a reference to compute the damages. I do not think an allowance of the expenses incurred in identifying the tow is warranted.

JACKSON & SHARP CO. v. PEARSON.

PEARSON v. LOUISVILLE SOUTHERN R. CO.

(Circuit Court, D. Kentucky. May 31, 1892.)

1. FEDERAL COURTS—JURISDICTION—CHOSE IN ACTION.

A county subscribed for stock in a railroad company, to be paid by an issue of county bonds under an act which prescribed that the bonds, when executed, "shall be deposited with the trustee, to be held in escrow and to be delivered to the said railroad company when it shall have become entitled to the same" by compliance with the prescribed conditions upon which the subscription was made. *Held*, where the bonds were withheld by the trustee, upon compliance with the conditions, that the right of the railroad company was one "to recover the contents of a chose in action" (Act Cong. Aug. 1888), and therefore, where the railroad company and the trustee are citizens of the same state, an assignee of the company cannot sue to recover the bonds in a federal court.

2. REMOVAL—LIS PENDENS—ASSIGNMENT.

A trustee filed a bill of interpleader in a state court, praying an adjudication of conflicting claims upon the part of a county and a railroad company to certain bonds. The railroad company had parted with all its interest in the subject-matter before the bill was filed, to a construction company, which had not been made a party to the suit. After the bill had been filed the construction company assigned to J. & S., citizens of another state, who were subsequently made parties to the suit by amendment. *Held*, that J. & S. were not lis pendens purchasers, and therefore entitled to have the suit removed, although there was no diversity of citizenship between the parties to the original bill.

3. SAME—CROSS BILL.

The fact that a defendant, against whom affirmative relief was sought in the state court, files a cross bill after removal to the federal court, does not change the relation in which he stood to the suit at the time of removal, and hence it is not necessary that the cause be remanded on the ground that none but defendants can remove.

4. SAME—CODEFENDANTS.

Any defendant citizen of another state from that in which the suit is brought may remove the suit to the circuit court for the proper district on the ground of local prejudice, although there are codefendants who are citizens of the same state as that in which suit is brought.

'At Law. Action by the Jackson & Sharp Company against Isaac Pearson, trustee, to recover possession of certain bonds of Mercer county, Ky., issued to pay a subscription by the county to the capital stock of the Louisville Southern Railroad Company, and deposited with defendant, to be held by him until certain conditions were complied with by said company. Defendant demurs to the petition.

In Equity. Suit brought in a court of the state of Kentucky by said Isaac Pearson, trustee, against said Louisville Southern Railroad Company and said Mercer county, to compel them to interplead, and have determined whether said bonds of the county in his possession should be delivered to the railroad company, or should be canceled. By an amended petition the Jackson & Sharp Company, plaintiff in the action at law above mentioned, and others, were made defendants. That company removed the cause to the circuit court of the United States on the ground of local prejudice. Mercer county and Pearson move to remand.