

course, there would have been no collision with the Edgewater if the Edgewater had not been where she was; but the position of the Edgewater did not cause the McCaldin to ring her jingle, nor prevent the Edgewater from being seen by the McCaldin if a proper lookout had been kept. There must be a decree for the libellant in the action of *Ellis v. The McCaldin Bros.*, with an order of reference to ascertain the damages, and the libel of McCaldin must be dismissed, with costs.

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THE MARY L. CUSHING.

KOCH et al. v. CUSHING et al.

(Circuit Court of Appeals, Second Circuit. January 9, 1895.)

No. 28.

COLLISION—INEVITABLE ACCIDENT—MOORED VESSEL—INSUFFICIENCY OF SPILE.

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

This suit was brought by the owners of the ship *Eolus* for damage sustained by the breaking adrift of the ship *Mary L. Cushing*, which was lying in the same slip. The district judge dismissed the libel on the ground that the disaster was due to inevitable accident. 60 Fed. 110.

Chas. C. Burlingham, for appellants.

Henry W. Goodrich, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We concur in the opinion of the district judge, viz. that the *Cushing* was moored in a manner proper and reasonable, under the circumstances, such as is usual in similar cases, and has been found by experience to be sufficient to answer the end in view, and that she broke loose "in consequence of the insufficiency of a spile, of which the ship could have no knowledge, in conjunction with a very high tide and an extraordinary gale, shifting to a quarter which bore most heavily upon the ship." It is unnecessary to discuss the evidence, which is sufficiently referred to in the opinion of the learned district judge. Decree affirmed, with costs.

## ANGLO-FLORIDA PHOSPHATE CO. v. McKIBBEN.

(Circuit Court of Appeals, Fifth Circuit. November 27, 1894.)

**1. FEDERAL COURTS—JURISDICTION—DIVERSE CITIZENSHIP—SUPPLEMENTAL OR ANCILLARY BILLS.**

M., a citizen of Florida, brought suit in the U. S. circuit court against S. and G., citizens of Georgia and Illinois, respectively, to establish a partnership with S. in buying and selling lands, in which suit a decree was entered in his favor, adjudging him a partner, and entitled to one-half the lands and the profits of the partnership. M. then filed a bill, which he called a "supplemental bill," against S. and G. and sundry others, not parties to the first suit, including the A. Co., a Florida corporation, alleging collusion to defeat the execution of the first decree; that certain lands conveyed to the A. Co. were, at the time, held in trust for M. as to his interest as a partner, of which the A. Co. had notice; and praying, among other things, that M. be decreed to have a vendor's lien for his half interest in such land. *Held*, that such bill did not fall within any rule applicable to supplemental or ancillary bills of which jurisdiction could be entertained without regard to the citizenship of the parties, since new parties were brought in, and new matter charged as a basis of relief, not litigated in the first suit by the same parties standing in the same interests.

**2. JUDGMENT AND DECREE—HOW FAR BINDING.**

*Held*, further, that the decree in the first suit, which adjudged plaintiff entitled to share in the assets of the partnership, but did not adjudicate upon the title to any particular land, could not affect the title to lands belonging to the partnership, which had been conveyed, before the commencement of that suit, to third persons, not made parties to it.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

This was a suit by John C. McKibben against the Anglo-Florida Phosphate Company and others for the enforcement of a decree. An injunction was granted by an interlocutory order of the circuit court, from which the Anglo-Florida Phosphate Company appeals.

Thomas A. Banning and George L. Paddock, for appellant.

John H. Burchell and Bisbee & Rinehart, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

BRUCE, District Judge. The bill was filed February 14, 1894. The appellant company, defendant in the court below, appeared and interposed demurrers to the bill, raising the question of jurisdiction of the court, after which the writ of injunction complained of was allowed.

The first assignment of error is in granting an injunction against this defendant in the interlocutory order or decree of May 4, 1894, when it appears on the face of the bill of complaint that this court had no jurisdiction of this defendant, because it appears that the defendant is a citizen of the same state as the complainant. The appeal is prayed for by the Anglo-Florida Phosphate Company alone, and there is an order of severance in the record. The allegation in the bill is that John C. McKibben, who resides in the county of Marion, state of Florida, brings this, his supplemental bill, for the enforcement of a decree against George C. Stevens, of the city of