

importation from Colombo, Ceylon, to the port of New York. By the terms of the bill of lading under which the oil was shipped, the vessel was not to be accountable for leakage, unless caused by bad stowage. After an examination of the evidence, I am satisfied that the weight of it goes to show that the oil was delivered on board the vessel in good order and condition, and that the casks containing it were not insufficient; and that the leakage in question was caused by negligent stowage on the part of the vessel, in allowing many of the casks of oil, after they were delivered to the ship, to remain on the deck in Ceylon, before they were put below, some 14 days, in very hot weather; and it was also negligence on the part of the ship, in my opinion, to use green cocoanuts for dunnage. According to the weight of evidence, green cocoanuts are not proper dunnage for such a cargo. The ship was also, in my opinion, guilty of negligence in stowing heavy casks of cocoanut oil upon small casks of plumbago, unable to sustain the weight of the oil casks. The loss of the oil sued for arose, in my opinion, from one or all of the above faults, and the ship is liable therefor.

The second of the above-named actions is brought by the owners of the ship against the casks of oil above mentioned to recover for damage to the plumbago, which was stowed below the oil, by leakage of oil upon the plumbago; which leakage, it is claimed, was caused by the insufficient condition of the casks containing the oil. As already stated, the weight of the evidence is that the casks were not insufficient, and that the damage to the plumbago arose from bad stowage by the ship of the oil which was placed above the plumbago. For that the ship alone is liable.

There must be a decree in the first of the above-named cases for the libellant, with an order of reference to ascertain the damages; and in the second case the libel must be dismissed, with costs.

THE HENRY CLARK v. O'BRIEN.

(District Court, E. D. Pennsylvania. January 18, 1895.)

No. 88 of 1891.

NAVIGABLE WATERS—PIERS—INJURY TO VESSEL.

Where a vessel, in going out of a harbor, gets out of her course, and is injured by striking a pier, the owner of the pier, though it is an obstruction to navigation, is not liable for the loss, the vessel having been at fault in starting out in the existing state of the wind, sea, and tide, especially without a pilot, and in persisting in her efforts to get out after it had become hopeless, and in not anchoring when driven towards the pier.

Libel by the Henry Clark against Albert H. O'Brien for injury received by striking a pier belonging to defendant.

Lindley M. Garrison, for libellant.

John G. Lamb and Joseph Thompson, for respondent.

BUTLER, District Judge. The schooner, which was two-masted, 102½ feet long, and 25 feet wide, having run into Absecon Inlet,

August 24, 1892, under stress of weather, started out to sea the next morning. Her master was not familiar with the channel, though he had run it once, two years before, and was well acquainted with the coast. He followed another vessel in, and started back without such aid, or the employment of a pilot. When he started the wind was light, and the tide, and a heavy sea, were against him. He encountered difficulty from the start, and, as the wind gradually died down, it materially increased. His course was unsteady and very slow. After beating against the waves for probably two hours, without reaching the sea, the vessel left her course and ran upon a bar, which she crossed into deeper water, towards the shore. After floundering about here for a while she ran against the end of an iron pier, built upon piles, extending from the shore 800 to 1,000 feet into the water. She was seriously damaged by the collision, and subsequently filled and sank. The suit is against the owners of the pier for the loss sustained.

Two questions are raised, first, was the schooner in fault? Second, is the pier an unlawful obstruction to navigation? As respects both, the burden is on the libellant. The pier being distant from her proper course, she must show that the collision was unavoidable or at least that its occurrence was not the result of her fault.

There is much conflicting testimony on this subject; but the weight of it is in my judgment very clearly against the libellant. I believe she was wrong: (1) In starting out in the existing state of the wind, the sea and tide, and especially in doing so without the aid of an experienced pilot; (2) in persisting in her effort to get out, after it had become virtually hopeless, instead of waiting or returning; (3) in not anchoring when driven towards the bar or subsequently when it was passed.

It would be a waste of time to cite and analyze the testimony. As I have said it is conflicting and irreconcilable. After reading what is said by the several witnesses on each side, I am convinced that the statement of Capt. Yates, an experienced pilot, who was an eyewitness of the occurrence, is substantially accurate. The libellant followed him when passing in the evening before, and he watched her the next morning from the time she started, until the collision occurred. Familiar as he was with the channel (living at Absecon) he says he would not have ventured to take her out, at the time; that she was badly handled; and that if her anchors had been dropped as she approached the bar, or after crossing it, they would have saved her. The testimony of Capt. Conover, who also watched her efforts to get out, is substantially the same; and the statements of these witnesses are amply corroborated.

It is unnecessary to examine the second point.

MARKWOOD v. SOUTHERN RY. CO.

(Circuit Court, E. D. Tennessee, N. D. March 2, 1895.)

CORPORATIONS — CITIZENSHIP — CONSTRUCTION OF STATUTE — REMOVAL OF CAUSES.

Act Tenn. 1877, c. 31, entitled "An act to declare the terms on which foreign corporations organized for mining * * * may carry on their business * * * in this state," providing (section 1) that such corporations may become incorporated in the state, and carry on the business authorized by their respective charters, and enjoy the rights and do the things therein specified, upon the terms therein declared, and (section 2) that they shall file a copy of their charter in the office of the secretary of state, and (section 3) that "such corporations shall be deemed and taken to be corporations of this state, and shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode * * * directed in the case of corporations created * * * under the laws of this state"; and Act Tenn. 1891, c. 122, amending the former act so as to include corporations chartered for any purpose, and providing (section 4) that, "when a corporation complies with the provisions of this act, it shall then be, to all intents and purposes, a domestic corporation, and may sue and be sued in the courts of this state, and subject to the jurisdiction of the courts of this state, just as though it were created under the laws of this state,"—do not make such a corporation a corporation of Tennessee; and therefore, being sued in the courts of that state, it may, by reason of its citizenship in the other state, remove the cause to a federal court.

2. SAME.—CONSTRUCTION OF STATUTE.

A corporation of one state, doing business in another by permission of the latter, does not thereby become a citizen of this state also, unless the language of the act granting permission clearly evinces a purpose to adopt such corporation or to create a new corporation.

3. SAME.

To make such corporation of one state a corporation of another state also, the language used must imply creation or adoption, and must, in form and effect, establish between the latter state and such company the same relations as exist between such state and a corporation originally created by that state.

4. SAME.

A mere declaration or indication of purpose in the caption or otherwise is not controlling in the interpretation where the operative parts of the statute in effect only prescribe the terms and conditions upon which a foreign corporation is authorized to do business in a state other than that which created it.

Action by C. H. Markwood against the Southern Railway Company. Heard on motion to remand.

Henderson, Jourolman, Welcker & Hudson, W. S. Dickinson, and Kirkpatrick, Williams & Bowman, for plaintiff.

Hacker, Deadrick & Epps and Burrow Bros., for defendant.

CLARK, District Judge. This action for damages for personal injury was brought in the circuit court of Washington county, and removed on defendant's application into the circuit court of the United States for the Northern division of the Eastern district of Tennessee, upon the ground that defendant is a corporation created and organized under the laws of the state of Virginia, and a citizen of that state, and a nonresident of Tennessee. The plaintiff filed a plea to the jurisdiction, setting up, in substance, that under