

where the tort originates on land, but results in damage on the water. Applying this criterion to the case at bar, it will be readily conceded to be conclusive in favor of the question of jurisdiction.

The second exception interposed is that it appears from the allegations of the libel that the wrong of which libelant complains was the act of a fellow servant, for which the respondent is not, in law, liable. The allegations to which this exception is directed are:

"That, in passing the same or said lumber on board of the said vessel, it was slid down a chute into her hold, and, as each piece was so slid down the said chute, warning was required, to notify those in the said vessel's hold, to enable them to escape from the said lumber as it slid down the said chute; and warning was given by the said defendant, and relied upon by the said libelant, for all of said lumber received down the said chute, up to the sliding of one piece, to wit, a large piece of lumber which the said defendant carelessly, negligently, and improperly slid down the said chute without any warning or notification that the same was coming or sliding down the said chute; and, the said defendant so allowing the said piece of lumber to slide down the said chute, the libelant, having no knowledge that the same was coming, was unable to avoid it, and, in consequence thereof, the said piece of lumber struck libelant's right leg, and broke the same, etc."

The "defendant" is described in the libel as the Port Blakely Mill Company, organized and existing under and by virtue of the laws of the state of California. Being a corporation, it must necessarily act by and through its agents and servants. The company itself is not a fellow servant. When the libel mentions the "defendant," it means, obviously, an employé of the defendant. But who this person was, or what occupation he was engaged in, or what relation he bore to the company and to the libelant, is not disclosed by the averments of the libel. It is plain, therefore, that the court cannot, on the present exception, determine affirmatively that the libelant was injured by the carelessness or negligence of a fellow servant. The final disposition of this question must wait until the court has become more fully advised in the premises. The exceptions are therefore overruled.

THE BOLIVIA.

DECHAN v. BARROW STEAMSHIP CO., Limited.

(Circuit Court of Appeals, Second Circuit. November 16, 1894.)

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

Samuel B. Johnson, for libelant and appellant.

Wing, Shoudy & Putnam, for claimant and appellee.

Order filed declaring action abated by reason of death of the libelant.

CENTRAL VERMONT R. CO. v. LEWIS.

(Circuit Court of Appeals, Second Circuit. January 8, 1895.)

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

Louis Hasbrouck, for appellant.

Shedden & Booth, for appellee.

Dismissed, per stipulation of consent withdrawing appeal.

CLEVELAND, C. C. & ST. L. RY. CO. v. FOSTER et al.

(Circuit Court of Appeals, Second Circuit. November 12, 1894.)

Nos. 19 and 20.

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

Lourey, Stone & Auerbach, for appellants.

Henry Melville, for appellees.

Order of discontinuance on consent.

THE DELAWARE.**THORNE v. WINNETT et al.**

(Circuit Court of Appeals, Second Circuit. April 16, 1895.)

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

J. Parker Kirlin, for appellant.

Harrington Putnam, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

No opinion. Certified to the supreme court of the United States as to the effect of the act of congress of February 13, 1893, and, if decided adversely by that court, the order is to be affirmed.

EDISON ELECTRIC ILLUMINATING CO. et al. v. ACCUMULATOR CO.

(Circuit Court of Appeals, Second Circuit. November 11, 1894.)

No. 131.

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

E. H. Lewis and John R. Bennett, for defendants and appellants.

Betts, Hyde & Betts, for complainant and appellee.

Before WALLACE and SHIPMAN, Circuit Judges, and TOWNSEND, District Judge.

No opinion. Affirmed.

EDISON ELECTRIC LIGHT CO. et al. v. STAFFORD et al.

(Circuit Court of Appeals, Second Circuit. November 14, 1894.)

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

Eaton & Lewis, for appellants.

Hobbs & Gifford, for appellees.

Order entered on stipulation of consent withdrawing appeal.

EISING et al. v. OSBORN et al.

(Circuit Court of Appeals, Second Circuit. October 13, 1894.)

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

Rose & Putzel, for appellants.

Jones & Govin, for appellees.

Dismissed, pursuant to the twenty-third rule.