

THE ORANGE.

NEW YORK CENT. & H. R. R. CO. v. HOBOKEN FERRY CO.

(Circuit Court of Appeals, Second Circuit. June 7, 1894.)

No. 8.

COLLISION—STEAM VESSELS CROSSING—CONTRARY SIGNALS—CHANGE OF COURSE.

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

This was a libel by the New York Central & Hudson River Railroad Company against the steam ferryboat Orange (the Hoboken Ferry Company, claimant), to recover damages for injuries to libelant's tugboat No. 3, resulting from a collision. The district court found the tug solely in fault, and dismissed the libel, with costs. 64 Fed. 141. The libelant appeals.

Carpenter & Mosher, for appellant.
Leon Abbett, Jr., for appellee.

Decree affirmed upon the opinion of the district judge.

In re THE M. MORAN.

MORAN v. CULLIMAN.

(Circuit Court of Appeals, Second Circuit. December 18, 1893.)

No. 38.

NEGLIGENCE—COLLISION—LOOKOUT.

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

This was a petition by Michael Moran, part owner of the steam tug M. Moran, for limitation of liability in respect to the death of two pilots who were crushed between the tug and a ship which she had towed out to sea, it being alleged in the petition that Dora Culliman, administratrix of the estate of one of the deceased, had commenced an action in the supreme court of the state of New York to recover damages against the libelant and petitioner under the New York statute. The district court entered a decree against the petitioner in the sum of \$5,000 upon the claim of the said administratrix. 53 Fed. 845. The petitioner appealed.

Carpenter & Mosher, for appellant.
James Parker, for appellee.

Decree affirmed, with interest and costs, upon the opinion of the district judge.

SPRINGER et al. v. HOWES et al.

(Circuit Court, E. D. North Carolina. October 2, 1895.)

1. REMOVAL OF CAUSES—JURISDICTION TO DETERMINE.

The state court in which an action has been commenced, if an application is made to it for an order of removal to a federal court, and the federal court to which removal is sought, have an equal right to determine whether, upon the face of the record and the petition for removal, a proper case for removal is made out.

2. SAME—COMITY BETWEEN COURTS.

Defendants in an action commenced in a state court filed a petition and bond for its removal to the federal court, and applied to the state court for an order of removal, which was refused. Defendants then appealed to the state supreme court, where an elaborate argument took place, and on full consideration the decision of the lower court was affirmed. Defendants, having filed a transcript of the record in the federal court, then attempted to proceed therein, and plaintiffs moved to remand. *Held*, that the federal court would not, under such circumstances, overrule the decision of the state courts, but would leave the defendants to their appeal therefrom to the supreme court of the United States, and in the meantime remand the case.

This was an action by L. W. and E. D. Springer against Howes & Sheets and others, commenced in a court of the state of North Carolina. The defendants filed a petition and bond for removal to the United States circuit court, and filed a transcript of the record in that court. Plaintiffs moved to remand.

Shepherd & Busbee, for plaintiffs.
John W. Hinsdale, for defendants.

SEYMOUR, District Judge. The suit was begun in the superior court of Beaufort county, N. C. At the appearance term of that court, in February, 1894, the defendants Howes & Sheets filed a petition and bond for removal. The superior court refused to remove, whereupon said defendants appealed to the supreme court of North Carolina. The latter court affirmed the decision of the court below, and filed an opinion, which appears in 20 S. E. 469. The same defendants have caused a transcript of the record to be filed in the circuit court of the United States for the Eastern district of North Carolina, and seek to carry on this litigation in that court. The plaintiffs and the defendants other than Howes & Sheets move to remand. The ground alleged for removal is an alleged separable controversy between themselves, citizens of Pennsylvania, and the plaintiffs and one Mayo (a defendant), citizens of North Carolina. The defendants other than themselves, who are citizens of Pennsylvania, they say, are not necessary parties to the controversy, being sufficiently represented by Mayo, their trustee. I do not propose to discuss the grounds upon which it is claimed that the case is properly in the circuit court, for reasons to be given hereafter. Enough has been said to indicate the statute which controls the case, as to its removability.

Under the statute (Act March 3, 1887) the right of removal on the ground of diverse citizenship is allowed to defendants only if the case is one over which the circuit court is given original jurisdiction by the