servation of the river below and westward; which I am satisfied she did not. Coming about under the circumstances, and then attempting to cross the steamer's bows, was careless if not reckless. She evidently proceeded with the notion, which is not uncommon in such vessels, that the steamer was bound to "keep off" under all circumstances. After turning and seeing the steamer she should have changed her course immediately instead of attempting to cross her bows. She could readily have done so and passed astern lower down. I believe her lookout was negligent, but think she saw the steamer after turning, in time to avoid difficulty, but kept her course thinking the steamer could by some maneuver get out of her way, and was bound to do so.

Was the steamer also in fault? Having found the sloop guilty of fault that led directly to the collision, the steamer should not be condemned without clear proof that she was also similarly guilty. As the sloop ran eastward the steamer turned westward, to go under her stern, which was proper; and if the sloop had continued her course the accident could not have happened. When it became evident that the sloop intended to cross her bows, having turned westward, it was too late to avoid the collision by an attempt to turn the steamer eastward. I have no doubt of this; nor have I any doubt that the sloop's intention to cross her bows was discovered as soon as possible. Under the circumstances the only thing the steamer could properly do was to reverse her engines, and thus endeavor to diminish the impending blow. This I think she did. Her witnesses testify positively that she did. The fact that she forced the sloop some distance up stream does not contradict them;- they are mistaken in supposing she had about stopped when the collision occurred. To stop such a vessel, even with the engines reversed, requires a greater distance than she had to run to meet the sloop.

A decree may be prepared for dismissal of the libel with costs.

THE ETONA.

DOHERR v. THE ETONA.

(Circuit Court of Appeals, Second Circuit. January 8, 1896.)

No. 50.

1. ADMIRALTY—NEGLIGENCE.
The findings and conclusions in The Etona, 64 Fed. 880, in regard to negligence of the ship, approved.

2. SAME—LIABILITY FOR ACTS OF PILOT.
When the cargo of a vessel is damaged in consequence of the negligence of a pilot in a foreign port, the bill of lading providing that claims for damage shall be settled by the law of England, without resort to the courts of any other country, the owner of such cargo cannot recover, here, in any event; for, if the ship could ordinarily be held liable for

such negligence, either the stipulation in the bill of lading is valid, and prevents recovery, or it is invalid, and, the law of the United States governing, the third section of the Harter act protects the ship.

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

This is an appeal from a decree of the district court, Southern district of New York (64 Fed. 880), dismissing a libel for damages to a cargo of hides shipped at Buenos Ayres in the lower hold, No. 2 hatch, above which was stowed, in the 'tween decks, a quantity of Pernambuco sugar.

Harrington Putnam, for appellant.

J. Parker Kirlin, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We concur with the district judge in the finding that there was no negligence in the stowage of the hides or of the sugar; that the efficient cause of the damage was the stranding on going adrift, which was wholly unexpected, and could not have been anticipated, and was a sea peril, within the exception of the bill of lading. We further concur in the finding that the going adrift was not by reason of any negligence of the ship, but because the local pilot assigned her a position somewhat outside of the ordinary anchorage ground, and where the bottom was bad for holding. The conclusions of the district judge upon these findings are correct. Either the negligence of the local pilot is negligence for which the ship is not ordinarily responsible, or, if the ship could ordinarily be held for the consequences of such pilot's negligence, then either the stipulation in the bill of lading adopting the law of England is valid, and prevents recovery, or it is invalid, and our own law, in the absence of any reference to the law of Brazil, remains as the only law of the case; in which event the third section of the Harter act protects the ship against libelant's claim, since there has been no negligence, fault, or failure in loading or stowage.

The decree of the district court is affirmed, with costs.

NATIONAL ACC. SOC. v. SPIRO.

(Circuit Court of Appeals, Sixth Circuit. January 7, 1896.)

No. 260.

REMOVAL OF CAUSES—APPEARANCE—EFFECT OF PETITION TO REMOVE.

An action was commenced against a New York corporation, in a Tennessee state court, by service on one M., "as agent and adjuster" for such corporation. The defendant filed its petition for the removal of the cause to the federal court, without in any way limiting the effect of its appearance in so doing, and afterwards filed a plea in abatement on the ground that M. was not its agent. *Held*, that the question whether the defendant, by filing its petition for removal, unaccompanied by a plea in abatement, and without restricting the purpose of its appearance, waived the objection to the jurisdiction of the court for want of service, should be certified to the supreme court.

In Error to the Circuit Court of the United States for the Eastern District of Tennessee.

Cooper & Davis (McBurney & McBurney, of counsel), for plaintiff in error.

Ingersoll & Peyton, for defendant in error.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

PER CURIAM. This is an action upon a policy of accident insurance, begun in the circuit court of the state of Tennessee for the county of Knox, by the defendant in error, widow of Herman Spiro, the assured. The plaintiff in error is a corporation organized under the laws of the state of New York, with its principal office in the state of New York. The writ of summons was served upon one H. D. McBurney, "as agent and adjuster" for the said corporation.

The plaintiff in error seasonably filed its petition for a removal of said suit to the circuit court of the United States, upon the ground that the controversy involved a sum in excess of $2,000, and was wholly between citizens of different states. This petition did not specify or restrict the purpose of the defendant's appearance in the state court to the sole purpose of obtaining a removal of the cause into the federal court, and no plea to the jurisdiction of the court had been theretofore filed by it. After the removal had been perfected, the plaintiff in error filed a plea in abatement, properly verified, in these words:

"The defendant for plea says: The original writ in this cause was not served on the defendant or any of its agents, but that it was served April 17, 1894, on H. D. McBurney, who was not at the time of said service of said writ, nor has the said McBurney been, an agent of the said defendant on him an agent of the defendant at any time either before or since said service on him; and that there was no agent of the defendant of any kind or character in Knox county, Tennessee, on the said 17th day of April, 1894, nor has there been any such agent of the defendant in said county at any time since that date. The defendant further says that no legal process has been served upon it in this cause; therefore it is not bound to appear."