

ler's Steamboat Company (formerly Line), which had for years been accustomed to lay its vessels up for the winter at libelants' wharves, and to make such other use of the wharves as occasion required. During the period in question here, as on previous occasions, some of the boats were laid up next to the wharf, and the others outside of the ones first berthed. There were four berths next the wharf, and at times as many as four boats, one inside and three outside, occupied the same berth. The agent of the company testified that the arrangement with the owner of the wharf was that they were to pay "five dollars a day for each boat lying next to the wharf, nothing for any outside boat lying outside of the boats lying next to the wharf"; that in prior years the bills were rendered in bulk at the end of the season, after the boats had all left there, and were "against each large steamboat,—that is, the steamboat lying next to the dock,"—and that no charge was made upon the boats that lay outside. The libellant Robinson denied that any such arrangement was made as to inside and outside boats. Were this all the testimony, it might be difficult to reach a conclusion. But Egan, libelants' clerk who had charge of their wharves and kept the books, testifies that he understood that the company was to pay five dollars for each berth occupied. The book containing the account of the wharfage of these boats shows that, contrary to his custom in respect to other boats, he made no entry of tonnage, no entry of the charge for the wharfage (save for the first month, which he subsequently erased under direction), and that he apparently rendered one bill for each berth, however many boats were stored at it. We are satisfied that the arrangement for the season of 1890-91 was the same as in prior years, viz. that the boat lying next to the dock should pay five dollars a day, and that claimants might lay up boats outside of her without further charge. Whatever lien there might be for wharfage, therefore, would attach only to the boat against which wharfage was to be charged, and not against the outside boats. The evidence shows that neither of the boats libeled in these suits at any time during the period in controversy occupied an inside berth. Egan, who had charge of libelants' wharves, testified that the America, during the time she was there, occupied berth No. 2, and was outside all the time, and that when the Niagara came there she first occupied berth No. 3, outside, and then removed for the rest of the time to berth No. 1, outside. The record book corroborates his testimony. It would appear then that, under the arrangement, no charge for wharfage was to be made against either of these boats, and therefore no lien attached. The conclusion we have reached as to the facts renders it unnecessary to discuss the questions of law which were argued upon the appeals. The decrees of the district court are affirmed, with costs.

ATLAS GLASS CO. v. BALL BROS. GLASS MFG. CO. et al. (Circuit Court of Appeals, Second Circuit. May 1, 1899.) No. 111. Appeal from the Circuit Court of the United States for the Northern District of New York. Wm. L. Pierce, for appellant. F. G. Fincke, for appellees. Before WAL-LACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This appeal must be dismissed for want of jurisdiction. The case of Shepard v. Adams, 168 U. S. 618, 18 Sup. Ct. 214, is conclusive. See 87 Fed. 418.

BALTIMORE & O. R. CO. v. JOY. (Circuit Court of Appeals, Sixth Circuit.) Questions of law certified to the supreme court of the United States. See 19 Sup. Ct. 387.

CHILE GOLD-MIN. CO. et al. v. BOSTON & M. CONSOL. COPPER & SILVER MIN. CO. (Circuit Court of Appeals, Ninth Circuit. February 13, 1899.) No. 461. Appeal from the Circuit Court of the United States for the Southern Division of the District of Montana. Stapleton & Stapleton, for appellants. Louis Marshall and John F. Forbis, for appellee. Before GILBERT, ROSS, and MORROW, Circuit Judges.

GILBERT, Circuit Judge. This suit relates to the property which was the subject of the controversy in the case of *Montana Ore-Purchasing Co. v. Boston & M. C. C. & S. Min. Co.*, 93 Fed. 274. It is admitted that the allegations of the bill are identical with those of the bill in that case, and that the questions involved are the same. Upon the reasoning and the authorities cited in that case, the objection to the jurisdiction in the present case must be sustained. It is suggested that this court cannot go further than to order the dismissal of the appeal, since the question of the jurisdiction only is involved. The record shows, however, that the appeal was taken upon the merits also. The cause will be remanded, with instructions to dismiss the bill.

CITY OF LYNN v. GREEN. (Circuit Court of Appeals, First Circuit. May 12, 1899.) No. 220. Appeal from the Circuit Court of the United States for the District of Massachusetts. Dismissed per stipulation of counsel. See 81 Fed. 387.

THE ED. ROBERTS. (Circuit Court of Appeals, Third Circuit. April 23, 1899.) No. 17. Appeal from the District Court of the United States for the Western District of Pennsylvania. Albert York Smith, for appellant. D. F. Patterson, for appellee. Before **ACHESON** and **DALLAS**, Circuit Judges.

ACHESON, Circuit Judge. The question upon which this case turns is altogether one of fact. If the libelant sustained no substantial injury by reason of his fall, he was not entitled to recover substantial damages, under all the circumstances. Now, the learned district judge found that the libelant had not received any substantial injury from his fall, and that his stay at the Marine Hospital was occasioned by rheumatism, from which he suffered. This finding is well supported by the proofs. The clear weight of the evidence, we think, is with the respondent upon this question. The medical certificate which the libelant procured at the hospital, if admissible at all as against the respondent, was explained, and its effect greatly weakened, by the testimony of the physician whose signature it bears. The proofs, considered as a whole, fairly lead to the conclusion that the libelant's real trouble came from rheumatism, and that his fall had no connection with that ailment. After a most careful examination of this record, it is our judgment that the appellant has no just reason to complain of the action of the court below. Therefore the decree of the district court is affirmed.

E. T. BURROWES CO. v. ADAMS & WESTLAKE CO. et al. (Circuit Court of Appeals, First Circuit. April 27, 1899.) No. 288. Appeal from the Circuit Court of the United States for the District of Maine. Elmer P. Howe, for appellant. Dismissed. See 93 Fed. 462.

FARMERS' LOAN & TRUST CO. v. CITY OF CORINTH, MISS., et al. (Circuit Court of Appeals, Fifth Circuit. April 11, 1899.) No. 776. Appeal from the Circuit Court of the United States for the Northern District of Mississippi. Josiah Patterson and George Gillham, for appellant. J. M. Boone and E. S. Chandler, for appellees. Before **PARDEE**, **MCCORMICK**, and **SHELBY**, Circuit Judges.

MCCORMICK, Circuit Judge. In this case the material questions, both of law and fact, are substantially the same that were presented and considered in