tion and their continuance at work are held to be conclusive evidence that, as to the particular danger of which they were thus advised, they took their risk. This has been held so many times that it is unnecessary to cite authorities. The principal ones will be found referred to and discussed in the exhaustive opinion of the learned district judge. He held, however, that there was no assumption of the risk of the hatchway being unlighted,—apparently on the ground of some failure of proof that it had theretofore, as a general thing, been unlighted. We do not so understand the testimony. One witness testified that the kind of light they usually had there was exactly the same as on the evening of the accident. Other witnesses testified that the coaling of the ship and putting out the lights had always been done in that way before. Still another witness (called by libelant), Vaughan, the man who was detailed to gather up the shovels, says that, when he heard a call that Craig was in the hold, he got his coat and started along, with his lamp in his hand, "which," says he, "I always do. I take my lamp to see my way out." If there had been any conflicting evidence, perhaps this proof would not be especially strong, but there is none. Nowhere is there any suggestion in the testimony that the claimant had ever maintained a fixed light at the between-decks hatch, or that it was ever lighted otherwise than by the lanterns in the hands of the men using it. Without deciding whether or not the claimant was negligent in failing to maintain a fixed light at the hatch, when it had given 14 hand lanterns to the score of men it set to work in the vicinity of such hatch, we are of the opinion that the proximate cause of the accident was the negligence of libelant and of his fellow workmen in failing to avail themselves of the lanterns furnished them to guide themselves as well as their wheelbarrows, and that the libelant must be held to a knowledge of the conditions under which the work was done, since it had been done in the same way repeatedly and usually during his employment. By continuing to work where the path of ingress and egress was lighted, not by any fixed light, but the casual gleams of lanterns in the hands of himself and his fellow workmen, he must be held to have taken the risk that the carelessness of one or other of them would some day bring about a catastrophe.

Much was said on the argument of the decision in The Manhanset, 53 Fed. 843. The case is clearly distinguishable. There is no analogy between a permanent structure like an open hatch, the exact location of which is known in advance, and a snarl in the fall of a winch, which may be at one time in one place, and at another elsewhere. The decree of the district court is reversed, and the cause remanded, with instructions to dismiss the libel.

MAHER v. TOWER HOTEL CO. et al.

(Circuit Court, N. D. Illinois, N. D. May 11, 1899.)

1. REMOVAL OF CAUSES—SEVERABLE CONTROVERSY—FORECLOSURE SUITS.
In a suit in equity in Illinois to foreclose a trust deed, the trustee is a necessary party defendant, and the controversy is not severable, as between such trustee, the owner of the equity of redemption, and subsequent incumbrancers or lienors.[1]

2. SAME—TIME FOR FILING PETITION—DEMURRER.
The time allowed for filing a demurrer marks the limit of the time within which the defendant is required to "answer or plead" to the declaration or complaint under the terms of the removal act, and a defendant cannot remove a cause after his demurrer has been overruled and a rule entered against him to plead over.

3. SAME—PRACTICE—LOCAL PREJUDICE.
When application is made for removal on account of local prejudice or influence, the better practice is to allow counter affidavits to be filed, and to require it to be shown that defendant cannot in reality obtain justice in the state courts on account of such influence or prejudice.[2]

On Motion to Remand.

A. M. Lasley, for complainant.
E. T. Cahill, for certain defendants.

KOHLSAAT, District Judge. This cause comes on to be heard upon motion of complainant to remand to the circuit court of Cook county, Ill., from whence it is claimed this cause was improperly removed to this court. This is a foreclosure suit, the bill being filed in the state court on September 13, 1898, against the Tower Hotel Company, Timothy D. Crocker, Eliza P. O. Crocker, his wife, and others, to secure the sale of certain premises for the payment of certain notes of the Tower Hotel Company; the said Timothy D. Crocker being the present owner of the equity of redemption. On November 22, 1898, said Crocker and wife entered their appearance in that suit, and on December 10, 1898, filed a general and special demurrer therein. Subsequently, on April 3, 1899, the demurrer of defendants was overruled, and a rule entered on all defendants to plead or answer to the bill of complaint within 20 days. On April 20, 1899, defendants Crocker and wife filed in the state court a petition for removal, alleging that complainant was a citizen of Illinois, that petitioners were citizens of Ohio, that the suit was of a civil nature (being a proceeding in equity to foreclose a trust deed), that petitioners were the only defendants directly interested in the controversy, that all other defendants were only nominal parties, and that petitioners could not obtain justice on account of prejudice or local influence in the court in which the suit was brought, nor in any other state court to which they have the right to remove the cause on account of such prejudice or local influence. The petition for removal is subscribed and sworn to by the solicitor of Crocker and wife, and said

[1] For removal of causes in separable controversy cases, see note to Robbins v. Ellenbogen, 18 C. C. A. 86.

[2] For local prejudice as ground for removal, see note to Schwenk v. Strang, 8 C. C. A. 95.