

Upon the foregoing facts, which are admitted or clearly proved, I am unable to come to the conclusion that the Baker's rate of speed was immoderate. She could not have been going more than four or five miles an hour; hardly faster than a fast walk on land. Undoubtedly, to those on the schooner, she seemed to be coming on with great velocity. But their view of her was but for a moment before the crash, and, in the excitement caused by the impending calamity, they were in no condition to form an accurate and reliable judgment. The steamer was not bound to lie to, or come to an anchor. Her duty was to keep a good lookout, and to move slowly, both of which she did. *The Johns Hopkins*, 13 Fed. Rep. 185.

In considering the case, I have rejected the evidence of the chief engineer and assistant engineer of the Baker. They were called by the libelants, and testified that the steamer's engines were out of order and could not be reversed promptly, and were not moving backward at the time of the collision. They have since left the employment of the claimants. Their hostility to the claimants was apparent, and sufficient, in my judgment, to throw discredit on their statements. I have no doubt, from the other evidence in the case, that the order to reverse was given, and was promptly and successfully obeyed.

Having decided that the steamer was without blame, it is unnecessary to consider the faults alleged by the steamer against the Dresden,—that she changed her course, and failed to sound a sufficient fog-horn. Under the circumstances, I do not think the claimants ought to recover costs.

Libel dismissed, without costs.

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### WILSON v. ROYAL EXCHANGE SHIPPING Co.<sup>1</sup>

(District Court, E. D. New York. December 31, 1884.)

#### CARRIERS OF GOODS BY WATER—BILL OF LADING—REFUSAL TO RECEIVE GOODS—DUTY OF SHIP.

Where the person to whom goods named in a bill of lading are to be delivered refuses to receive them, the only duty attaching to the ship is to keep the goods for their owner.

In Admiralty. Exceptions to answer.

The facts in this case were these: The libelants were the owners of a steamer on which, at the port of Cephalonia, cargo was shipped to J. D. Nordlinger, at New York, via London, and through bills of lading were issued from Cephalonia to New York. At London the libelants' agents took the cargo and transhipped it on the steamer Egyptian Monarch, belonging to the respondent, and prepaid the

<sup>1</sup> Reported by R. D. & Wyllys Benedict, of the New York bar.

transatlantic freight, under a second bill of lading by which the respondent was to deliver the cargo at New York to the libelants' agents there; the plan apparently being that Nordlinger would thereupon receive the goods from libelants' agents on his through bills, and pay the freight from Cephalonia to London. On arrival in New York the cargo was delivered to Nordlinger, and the respondent did not collect any freight from him. The libel was filed to recover from the respondent the amount of freight uncollected from Nordlinger. The defense as set up in the answer was that stated below in the opinion, and that the libelants must first exhaust their remedy against Nordlinger. The libelants excepted to the answer as insufficient and impertinent and irrelevant, etc.

*Foster & Thomson*, for libelants.

*Butler, Stillman & Hubbard*, for claimants.

BENEDICT, J. The answer, to which exception is taken, avers that the libelants were notified of the readiness of the steamer to deliver the goods mentioned in the bill of lading sued on, and thereupon informed the owners of the steamer that they, the libelants, were not in a position to take the goods, and that Jacob D. Nordlinger was the owner of the goods. This was, in legal effect, a refusal on the part of the libelants to receive the goods. Upon such refusal the only duty attaching to the ship was to keep the goods for the owner. This duty they discharged when they delivered the goods to Nordlinger.

The exceptions to the answer must be overruled and the libel dismissed, unless libelants notice the cause for trial, and pay the costs of this hearing within 20 days.

MAYOR, ETC., OF NEW YORK v. NEW JERSEY STEAM-BOAT TRANSP. CO.  
and others.

(Circuit Court, S. D. New York. August 20, 1885.)

## 1. REMOVAL OF CAUSE — NECESSARY PARTIES — RECORD — INJUNCTION — FERRY FRANCHISE.

In determining the right of removal of an action in equity on the ground of residence in different states, the residence of the *necessary* parties only will be considered.

## 2. SAME — MOTION TO REMAND.

Upon a motion to remand such an action before answer, where the averments of the complaint are so ambiguous as to make it doubtful whether certain defendants residing in the same state with the plaintiff are *necessary* parties, and especially where there are indications of a design to obstruct removal by the introduction of additional parties, the averments of the complaint should be rigidly scrutinized, and the whole record, including the plaintiff's affidavits, which form a part thereof, be looked at; and if it therefrom appears probable that such defendants are not necessary parties, the cause should be retained without prejudice to subsequent remanding, should they afterwards appear to be necessary parties.

## 3. CASE STATED — PRIOR INJUNCTION.

The defendant company was organized in New Jersey to run steam-boats between Staten Island and New York, touching at several intermediate points in New Jersey; and thereunder was operating its business and running the steamer D. R. M. The plaintiff claimed that this was a *ferry*, and was run illegally without plaintiff's license, and brought suit for a perpetual injunction against the company, and made parties defendant also the master and engineer of the steamer, and the secretary of the company, and one S., who resided in New York, and had been enjoined in the state court in a previous suit, but, as was alleged, had procured this company to be organized as a scheme for his own benefit, and was operating the ferry purporting to be operated by the company. The plaintiff's affidavits showed that S. sedulously avoided all ostensible and legal connection with the company. *Held*, that no fact was stated whereby it appeared that the defendant company was not the sole party responsible to third persons for its transportation business; that an injunction against the company would bind all its officers, agents, and employes, and stockholders; and as it did not appear that S. personally owned or controlled directly any part of the line, *held*, that the company alone was a necessary party, and that the cause should not at present be remanded. Whether the organization of the new company by S. was in contempt of the prior injunction, *quere*.

In Equity.

J. J. Townsend and W. W. Macfarland, for the motion.

C. C. Beaman, opposed.

BROWN, J. The bill of complaint in this case was filed in the superior court of the city of New York to obtain an injunction perpetually restraining the defendants from running the steam-boat D. R. Martin, or any other vessel, as a ferry, from pier 18, New York, to Staten Island, without first taking out a license from the complainant. After the service of the complaint, and of several affidavits upon which a motion was noticed to obtain an injunction *pendente lite*, the transportation company removed the cause to this court. The petition of removal sets forth that of the five individual defendants three are citizens of New Jersey, and that the transportation company is also a citizen of New Jersey; that the complainant is a citizen of New