

THE NIAGARA COUNTY.¹

(District Court, E. D. New York. July 13, 1885.)

COLLISION—EVIDENCE—LIGHTS—NEGLIGENT LOOKOUT.

Held, on the evidence, that the cause of the collision which gave rise to this action was the failure of the steersman of the N. to see the colored lights of the W., and not any faulty location of the lights.

In Admiralty.

Goodrich, Deady & Platt, for libelants.

Carpenter & Mosher, for claimants.

BENEDICT, J. The cause of the collision in question was the failure of the man steering the Niagara County to see the colored lights which the Wilmot is proved to have carried. The excuse for the omission to see the colored lights of the Wilmot is that they were so placed on the cabin of the boat with reference to the lights carried on the bow of the boat that the bow lights rendered the colored lights invisible to the steersman of the Niagara County. The decisive question, therefore, is not as to the presence of colored lights on the Wilmot, but as to the location of such lights. Upon this question the weight of the evidence appears to be in favor of the libelants' statement that the lights were set upon standards that had just been constructed for that purpose at Port Jackson, and so located that they were not rendered invisible by the bow lights, but were visible to an approaching vessel. The real cause of the collision, no doubt, was the inattention of the steersman of the Niagara County, who was the only person on the deck of that vessel when the colored lights of the Wilmot became visible.

There must be a decree for the libelants, with an order of reference.

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.

NATIONAL BANK OF JEFFERSON v. FORE and others.

(Circuit Court, E. D. Texas. October 21, 1885.)

NATIONAL BANKS—ACTION AGAINST RESIDENT DEFENDANTS—REPEAL OF REV. ST. § 629, SUBD. 10.

The tenth subdivision of section 629, Rev. St., has been repealed by the proviso in section 4 of chapter 290, St. 1881-82, being an act to enable national banks to extend their corporate existence, and for other purposes, approved July 12, 1882, and a national bank cannot now institute and maintain a suit against residents of its own state and judicial district.

On Plea to the Jurisdiction.

McKay & Camp, for plaintiff.

Culberson & Culberson, for defendants.

SABIN, J. This suit was filed January 3, 1885, the plaintiff and all the defendants being residents and citizens of the Eastern district of Texas, with the exception of one of the defendants, who was a resident of the Northern district of Texas; the matter in dispute being over \$5,000, including interest, for which judgment is sought, to which the defendants interpose their exception to the jurisdiction, relying upon the fact exhibited in the petition that all the parties to this suit are citizens or residents of this state; the plaintiff itself being a resident of Marion county, Texas, with its place of business at Jefferson, where this court is held, and alleged to be a corporation created by and existing under the laws of the United States of America.

It is claimed on the part of the defendants that the tenth subdivision of section 629, Rev. St., is repealed and rendered inoperative by the proviso contained in section 4, c. 290, St. 1881-82, being an act to enable national banking associations to extend their corporate existence, and for other purposes, approved July 12, 1882. Section 629, with the tenth subdivision only, reads as follows:

"The circuit courts shall have original jurisdiction as follows: *Tenth.* Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations."

And the proviso contained in section 4, above referred to, is as follows, viz.:

"Provided, however, that the jurisdiction of suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, *and not other than*, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking association may be doing business when such suits may be begun; and all laws and parts of laws of the United States inconsistent *with this proviso* be, and the same are hereby, repealed."

This proviso is greater and broader than the section or act to which it appertains, so far as its effects are concerned. It was a proviso