Ferry, and to adopt the testimony of those witnesses who say that the tug was going up the river, and was run over by the schooner overtaking her from below. The libelant, John J. Pareis, must therefore recover for the loss of his tug, and the libel of Soper for the injury to the schooner must be dismissed.

THE BURGUNDIA.[1]

CARTARSSO, Guardian, etc., *v.* THE BURGUNDIA.

(*District Court, S. D. New York.* December 27, 1886.)

NEGLIGENCE—NEGLECT OF THOSE IN CHARGE OF INFANT—IMPROPER PLACE—LIABILITY OF VESSEL—RUDDER CHAINS.

Libelant's ward, an infant three years old, was injured on board of the steam-ship Burgundia, by the rudder chain, which ran in an open box on the main deck. Previous to the accident, the infant's nurse had left him to himself, and, when hurt, he was in a part of the ship where he had no right to be. *Held*, that the fault rested with those who had charge of the child, and that the vessel was not liable for the injury.

In Admiralty.

A. B. Stewart, for libelant.

Benedict, Taft & Benedict, for claimants.

BROWN, J. The libelant's ward, Louis Cartarsso, a child of three years old, while on a voyage to this port from Naples, on the second day out, had its fingers crushed in putting them into the trough that carries the rudder chain across one of the pulleys upon the main deck. The child, being uneasy, had been set down by the nurse a few minutes before, and ran aft of the place where the steerage passengers were allowed; and, as the evidence shows, a few minutes afterwards its screams were the first notice that the nurse had that it was meddling with the chain. The wooden groove or box was such as is usual upon nearly all steam-ships, and no customary precaution was neglected. It is necessary that such chains shall be subject to constant and immediate inspection. It is plain that the child was where it had no business to be, and was improperly left to run into what dangers it might find. There is no law that requires a ship to prevent the possibility of accidents to infants incapable of taking care of themselves, who are suffered by those in charge of them to roam about the ship. The box provided in this instance was a reasonably sufficient precaution against liability to accident, and the blame is wholly on those in charge of the child.

The libel must be dismissed.

[1] Reported by Edward G. Benedict, Esq., of the New York bar.

SCHNADIG *v.* FLESCHER.

(*Circuit Court, D. Colorado.* January 3, 1887.)

REMOVAL OF CAUSE—REV. ST. § 639, SUBD. 3—DIVERSITY OF CITIZENSHIP.

It is a condition requisite to removal under Rev. St. U. S., § 639, subd. 3, that the diversity of citizenship must exist, both when the suit was begun and when the petition for removal is filed. *Gibson* v. *Bruce*, 2 Sup. Ct. Rep. 873, S. C. 108 U. S. 561, followed.

On Motion to Remand case to state court.

Markham & Dillon, for plaintiff.

Geo. W. Allen, for defendant.

BREWER, J. The motion to remand is sustained on the authority of *Gibson* v. *Bruce*, 108 U. S. 561, S. C. 2 Sup. Ct. Rep. 873, and *Frelinghuysen* v. *Baldwin*, 19 Fed. Rep. 49. The first case is an authoritative declaration that, under the removal act of 1875, the requisite citizenship must exist, both at the time of commencing the suit and also at the time of filing the petition for removal. The language of the act of 1867 is not identical with that of the act of 1875, but the difference is not such as to indicate a different intent on the part of congress. See the opinion of Circuit Judge WALLACE in the second case.

HONE *v.* DILLON.

(*Circuit Court, S. D. Georgia, E. D.* November 30, 1886.)

1. REMOVAL OF CAUSES—CITIZENSHIP—ACT OF CONGRESS OF MARCH 3, 1875.

   Under the act of March 3, 1875, a suit cannot be removed from a state court unless the requisite citizenship of the parties existed both when the suit was begun and when the petition for removal was filed.

2. SAME—ACT OF CONGRESS OF MARCH 2, 1867.

   Under the act of March 2, 1867, it is not necessary that the parties should have been citizens of different states at the time when the suit was brought, if they are citizens of different states when the petition for removal is filed.

3. SAME—FINAL HEARING—DEMURRER OVERRULED—STATE EQUITY RULES.

   Where the rules of procedure in equity of a state provide that a demurrer shall be disposed of at the first term, and the second shall be the trial term, the hearing of a demurrer to a bill, and an order overruling it, is not such a final hearing of the cause as will defeat a removal.

4. SAME — DEATH OF NON-RESIDENT DEFENDANT—BILL OF REVIVOR BY EXECUTOR.

   A bill of revivor is a mere continuation of the original suit, and, where the jurisdiction of the court had completely attached to the controversy, it cannot be divested by the death of the non-resident defendant, and his executor has the right to defend the suit without regard to his own citizenship.

(*Syllabus by the Court.*)

In Equity. Motion to remand.

R. R. Richards, for movant.

John M. Guerard and *Charles N. West*, *contra*.