

3. In respect to the claims of Leander B. Woods, T. M. Jenkins & Co., and H. Fry & Son, I think that the conclusions of the commissioner are clearly right.

And now, October 15, 1887, the exceptions to the commissioner's report and schedule of distribution are overruled, and the court confirms the same absolutely; and it is ordered that the fund in the registry of the court be paid out in accordance with the commissioner's distribution, unless an appeal is taken within 10 days.

THE CONNAUGHT.¹

NORDLINGER *v.* THE CONNAUGHT.

(*District Court, E. D. New York. November 9, 1887.*)

DAMAGE TO CARGO—BURDEN OF PROOF—SHIPPING.

In an action for damage to cargo, where claimant proved a hard voyage of the vessel, and that the casks which contained the cargo damaged were weak, and libelant offered evidence that the casks were good, but gave no proof of their bad stowage, *held*, that the burden was on the libelant to show that the cargo was badly stowed, and, this burden not being sustained, libelant could not recover.

Chas. E. Hill, for libelant.

E. B. Convers, for claimant.

BENEDICT, J. The evidence in this case as to the character of the voyage of the ship in which the libelant's prunes were transported, and the weak character of the casks in which the prunes were contained, is abundantly sufficient to cast upon the libelant the burden of showing bad stowage. This burden has not been discharged. The libelant, instead of proving bad stowage, has offered testimony to show that the casks were good, and asks the court to infer bad stowage. This cannot be inferred from the facts proved here. On the contrary, from the evidence as to the character of the casks, the natural inference is that the character of the casks caused the damage to the prunes.

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

RICHMOND & D. R. CO. v. FINDLEY and others.¹*(Circuit Court, N. D. Georgia. June 14, 1887.)*

1. REMOVAL OF CAUSES—SUBSTITUTED PARTY—RIGHTS OF.

Where a railroad company, by a contract of perpetual lease, acquired property of the lessor for which an action of ejectment was pending, *held*, the lessees' right of removal was only such as existed in the lessor.

2. SAME—INDEPENDENT CONTROVERSY—FORMAL PARTIES.

Where at the time of the lease an action of ejectment was pending against certain of the property so transferred, and the lessee, instead of defending the action, sets up by bill in equity only such matters as could by the law of the forum have been pleaded to the action of ejectment, such suit does not constitute a distinct and independent controversy, though the formal parties to the record are different. And such cause cannot be removed into the federal court unless the original action might also have been removed.

In Equity. Removal of cause. On motion to remand.

August 27, 1880, James A. Findley, as administrator of the estate of Elizabeth Findley, brought an action of ejectment in Hall superior court against James Weaver, tenant in possession, to recover a certain lot of land in Hall county. Weaver was in possession as an employe of the Atlanta & Charlotte Air Line Railway Company, a Georgia corporation. This company claimed title to said lot of land, upon which was located a part of its road-bed and track, and certain houses for the use of its employes. The Atlanta & Charlotte Company, on the twenty-sixth of March, 1881, executed a contract of perpetual lease of all its property, (including this lot of land sued for,) to the Richmond & Danville Railroad Company, a Virginia corporation. Neither company caused itself to be made a formal party defendant to the ejectment suit, as might have been done in Georgia. The Richmond & Danville Company, on August 25, 1884, filed a bill in equity in Hall superior court against James A. Findley, as administrator, James A. Findley, individually, and the other heirs at law of Elizabeth Findley, praying an injunction against the further prosecution of the ejectment suit, and for relief. Upon this a temporary injunction issued. February 18, 1885, the Richmond & Danville Company filed its petition for the removal of the equity cause to the United States circuit court for the Northern district of Georgia, on the ground of citizenship, under section 2 of the act of March 3, 1875, and the cause was accordingly removed. Upon the hearing in the circuit court, counsel for respondents moved for an order remanding the cause to the state court.

Pope Barron, Hopkins & Glenn, and S. C. Dunlap, for complainants.

John B. Estes, Claude Estes, and W. F. Findley, for respondents.

NEWMAN, J. During the hearing of this case counsel for defendants suggested to the court that the case was improperly removed to this court,

¹ Reported by W. A. Wimbish, Esq., of the Atlanta bar.