compartment, when shipped, were inferior in quality to those in the first compartment. No known means of ventilation, or of care of goods upon the voyage, are shown to have been neglected. Had the stowage of 230 tons in compartment No. 2 been proved to be unusual, or excessive, or known by previous experience to be attended with special danger, or to require more of the special appliances for ventilation than were employed in this case, negligence in the vessel might be found; and proof of those facts, it must be assumed, could and would have been produced on the trial. No testimony to that effect is produced on behalf of the libelants, and I cannot interpret the master's statements as in the least equivalent thereto. The shippers also seem to have had a representative present at the loading, who must have been acquainted with the facts of the mode of stowage and of ventilating. No objection was made thereto; and there is no evidence of apprehension by any one of injury beyond the ordinary amount of damage in transportation, or the risks incident to new fruit shipped early in the season. As there is no sufficient evidence, therefore, of improper stowage, or want of proper care, the libel must be dismissed.

CARPENTER *v.* THE CLINTON.[1]

(District Court, E. D. New York. May 12, 1888.)

TOWAGE—STRANDING—NEGLIGENCE.

On the evidence, *held*, that the grounding of libelant's boat was not caused by negligence of the tug, and the libel should therefore be dismissed.

In Admiralty. Libel for damages.

The libel alleged that libelant's canal-boat, which had been loading at a dock at Eaton's Neck, L. I., had been taken out into the stream by the propeller Clinton; that in so doing the canal-boat had been run aground by the propeller. The answer averred that the Clinton was taking the canal-boat out carefully, when the propeller herself ran aground; that thereupon a line was passed from the canal-boat to her consort in the stream, and she began to warp the remainder of the distance; but by the negligence of those on the canal-boats the line became fouled, and the boat went ashore. The answer further averred that the propeller's service was gratuitous.

Carpenter & Mosher, for libelant.

Jas. P. Albright, (*F. A. Wilcox*, advocate,) for claimant.

BENEDICT, J. I am unable to conclude from the evidence in this case that the grounding of the libelant's canal-boat was caused by negligence in the management of the tug proceeded against. The libel must therefore be dismissed, and with costs.

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

VINAL v. CONTINENTAL CONST. & IMP. CO. *et al.*

(*Circuit Court, N. D. New York.* August 6, 1888.)

REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.

Plaintiff, a citizen of Massachusetts, filed his complaint in a state court of New York against three corporations, citizens of New York, Connecticut, and Massachusetts, respectively, to obtain the restoration of certain stock and other property originally conveyed by plaintiff's intestate to the Connecticut company, under a mutual mistake of fact, and which, as alleged, is now in the possession of the Massachusetts company, which received it with full knowledge of plaintiff's equities. *Held*, that both the Massachusetts and Connecticut companies are necessary parties, and there is no separate controversy with the latter so as to entitle it to remove the cause to this court.

On Motion to Remand.

Matthew Hale, for plaintiff.

Adrian H. Joline, for defendants.

COXE, J. The plaintiff, a citizen of Massachusetts, commenced this action in the supreme court of the state of New York against three corporations, citizens of Connecticut, New York, and Massachusetts, respectively The defendant the Continental Construction & Improvement Company, the Connecticut corporation, removed the cause to this court, insisting that there is a separate controversy between it and the plaintiff. The plaintiff now moves to remand. Is there a separate controversy? In answering this question the rights of the parties must be ascertained and measured by an analysis of the bill of complaint. Nothing else is properly before the court. If the complaint states a cause of action at all it is for the restoration of certain stock and other property originally conveyed by Gen. Burt, the plaintiff's intestate, to the construction company under a mutual mistake of fact. It is alleged that this property is now in the possession of the Fitchburg Railroad Company, the Massachusetts defendant, and was received by it with full knowledge of the plaintiff's equities. In other words, the plaintiff seeks to be placed in the position occupied by Gen. Burt before he commenced negotiations with the construction company. The plaintiff might, it is true, have asked for an accounting and damages against the construction company alone; but he has not done so. He is not required to select a form of action suggested by the defendant, or even the form, apparently, most advantageous to himself. He is at liberty to bring his suit in any form he may deem advisable. It is not the action which might have been, or which should have been, commenced, but the action which actually was commenced, and is pending, which must determine the question of federal jurisdiction. Here the plaintiff has seen fit to pursue specific property upon the hypothesis that it still belongs to him as the representative of Gen. Burt. This is the theory of his suit. Whether wise or unwise, he must stand or fall upon his complaint as now constructed. He may have mistaken his remedy; he may be pursuing an *ignis fatuus;* he may be wholly unable to prove his allegations. But these are ques-