

lic, but it was for the use of the department of charities and corrections, and of all persons and boats that should have occasion to come to the wharf in the business of that department, or at their invitation; and such is the fact as respects the libelant and his boat. He went to the wharf with his canal-boat, to deliver a load of coal for that department. He moored his boat along-side, fastened to the spiles in a way not unusual, and sufficient, had the spiles been in proper condition. The tide there runs strong, and during the ebb the northerly spile was pulled out by the force of the tide pressing against the boat, so that the boat broke adrift and afterwards sank. The wharf was about 25 years old. There is no proof of any reasonable and proper attention to the repair of the dock, or of examination for that purpose. This was obligatory on the city, and on the department of docks, as its agent. The libelant had no notice of any weakness of the spiles. I cannot find him chargeable with any negligence. The boat was not in kind different from those previously accustomed to use the dock in the delivery of coal. The libelant had a right to assume that the spiles were sufficient for the purpose for which they were held out to those who had lawful occasion to use them in the service of the department of charities and corrections. The city, through the department of docks, was bound to maintain the wharf in a safe condition for use, and to make such examination and renewals from time to time as would render it fit and safe for the purpose designed, and for which they knew it was to be applied. The case therefore falls within the principle of *Ehrgott v. Mayor*, 96 N. Y. 264, and *Edgerton v. Mayor*, 27 Fed. Rep. 230, and not within the cases of *Maximilian v. Mayor*, 62 N. Y. 166, and *Haight v. Mayor*, 24 Fed. Rep. 93. Decree for the libelants, with costs.

FERGUSON, Shore Inspector, v. Ross *et al.*, (two cases.)

(Circuit Court, E. D. New York. March 20, 1889.)

1. REMOVAL OF CAUSES—ACTION BY STATE.

An action brought under Laws N. Y. 1875, c. 604, as amended by Laws 1885, in the name of the "shore inspector," to recover the penalty imposed by that act for depositing prohibited materials in the waters of the bay and harbor of New York, which penalty, when recovered, goes into the state treasury, is in effect an action by the state, and therefore not removable on the ground of citizenship, under act Cong. March 3, 1887.

2. SAME—PENAL ACTION.

The action cannot be removed for the further reason that it is in its nature penal, to enforce a police regulation, and not a suit "of a civil nature, at law, or in equity."

3. SAME—MOTION TO DISMISS BY PARTY REMOVING.

The fact that removal into the federal court was had upon the application of the defendant is immaterial on his motion to dismiss, if the controversy is one of which the court has no jurisdiction.

At Law. Motion to dismiss.

This is an action brought by the plaintiff, Cornelius Ferguson, in his official capacity as shore inspector, under the laws of the state of New York, to recover penalties from the defendants, P. S. Ross and Joseph B. Sandford, for depositing prohibited materials in the waters of the bay and harbor of New York. Plaintiff is a citizen and resident of New York, (Eastern district;) defendants are citizens and residents of New Jersey. The actions were begun in the state supreme court, and removed here by the defendants, under the act of March 3, 1887. Upon the trial, defendants moved for a dismissal on the ground that the court had no jurisdiction of the subject-matter of the actions. The motion was denied, with leave to renew after verdict, when the questions raised could receive more careful consideration. Verdicts were found for the plaintiff in both cases, and upon motions for a new trial the question of jurisdiction is again presented. The act of which it is claimed the defendants were guilty in each particular case was the dumping of dredging material in the bay and harbor of New York. The statute under which these actions were prosecuted is chapter 604 of the Laws of 1875 of the state of New York, as amended by chapter 414 of the Laws of 1885. This act makes it unlawful to deposit such materials within certain specified limits, including the bay and harbor of New York; and provides that any person offending against the provisions of the act shall be guilty of a misdemeanor, and shall, upon conviction, be punished by the infliction of a fine of not less than \$100 nor more than \$500, or by imprisonment as in case of misdemeanors, or both, in the discretion of the court. Out of any moneys received from fines under the act such sum or sums shall be allowed and paid for the expenses and disbursements attending the arrest as the court or magistrate may deem reasonable and proper. The act next provides for the appointment of a "shore inspector" of the counties named, to hold office for three years, and to serve until his successor shall be appointed. He is given an annual salary of \$2,000, (in lieu of all other compensation,) which, with the sala-