

MC CREERY v. THE JESSIE RUSSELL.

(District Court, D. New Jersey. April 9, 1889.)

COLLISION—STEAM AND SAILING VESSEL.

The lighter Barbara was coming down the North river, her sails filled from the starboard side, intending to go as near the Battery as was safe, and into the East river. A tug and sloop were discovered pointing up the river and towards the New York shore. Just before the collision the sloop starboarded her helm to go about, and struck the tug, which, to avoid damage, went ahead at full speed, and struck the lighter in her starboard bow, sinking her. The lighter would have cleared the sloop. *Held* that, as all the lighter had to do was to hold her course, the tug was liable for the collision.

In Admiralty. Libel for damages.

Hyland & Zabriskie, for libellant.

John Griffin, for respondent.

WALES, J On the morning of March 2, 1888, at about 9 o'clock, a collision occurred between the lighter Barbara and the tug Jessie Russell, in the North river, some 200 feet off pier 1. The lighter was coming down the river from pier 42, bound for the foot of Eighty-Sixth street, East river. The tide was slack, and the wind blowing a good sailing breeze from the north-east. The sails of the lighter were filled from the starboard side, her captain intending to go as near the Battery as safety would permit in passing round into the East river. When off pier 8 he sighted a tug and a sloop a little below pier 1, on a course pointing up the river and towards the New York shore. Just before the collision the tug, in seeking for a tow, had gone so near to the sloop that when the latter starboarded her helm to go about, her bowsprit scraped the starboard side of the tug which, to avoid further damage, started ahead at full speed, and had hardly cleared the sloop before she ran into the starboard bow of the lighter stem on, and sank her in a few minutes. The positions of the vessels after the collision show that the lighter would have cleared the sloop. The excuse made by the owner of the tug is that if she had not interfered the lighter would have run down the sloop; but this unusual defense, if true, cannot justify the neglect of the tug to keep away from the course of a sailing vessel, when by not doing so there would be danger of collision. The proof is conclusive that the course of the lighter was not changed, and her captain says that, owing to his nearness to the pier just before the collision, it could not have been altered without risk. The sloop had declined the proffered services of the tug, and, whatever might have been the imminence of the danger to the sloop, it cannot extenuate the fault of the tug in causing the collision. The want of a special lookout stationed forward on the lighter could not have contributed to the accident, as the captain had an unobstructed view of the movements of the other vessels, and had nothing to do but to hold his course. Let a decree be entered for the libellant, with an order of reference to ascertain the damages.

WOTHERSPOON v. MASSACHUSETTS BEN. ASS'N.

(Circuit Court, N. D. New York. May 10, 1889.)

1. FEDERAL COURTS—CIRCUIT COURTS—JURISDICTION.

Where every jurisdictional requirement of the act of 1875 is complied with, a suit in a district in one state, for a cause not arising there, between a plaintiff residing in another state and a corporation of a third state, will not be dismissed because by the local statutes the state courts have no jurisdiction.

2. SAME.

A foreign insurance company is "found" in the state of the district of suit, where it has complied with the statute thereof, (Laws N. Y. 1884, c. 346,) providing that foreign companies may transact business in the state after having designated the superintendent of the insurance department as its lawful attorney on whom process may be served.

At Law. On motion to dismiss.

This action was commenced in August, 1885, to recover \$10,000 upon two contracts of insurance issued by the defendant. The defendant appeared generally in the action, and on the 21st of October, 1885, served its answer. The plaintiff is a citizen of New Jersey, the defendant is a Massachusetts corporation. Chapter 346, Laws N. Y. 1884, provides, in substance, that foreign insurance companies may transact business in this state after having designated the superintendent of the insurance department as their lawful attorney upon whom process may be served. The defendant complied with the requirements of this act prior to the commencement of this suit. The defendant now moves to dismiss on the ground that the court has no jurisdiction of the action for the reason that the jurisdiction of this court is concurrent with that of the state courts, and, as the action cannot be maintained in the latter, it cannot be maintained here. The proposition that the state courts have no jurisdiction is based upon a decision of the court of appeals of New York in *Robinson v. Navigation Co.*, 19 N. E. Rep. 625. In that case the court, construing section 1780 of the Code of Civil Procedure, holds that the courts of this state do not have jurisdiction of an action where the plaintiff is a non-resident, the defendant a foreign corporation, and the cause of action did not arise within this state.

Foster & Thomson, for plaintiff.

J. K. Hayward, for defendant.

COXE, J., (after stating the facts as above.) The plaintiff and defendant are citizens of different states. The amount in controversy exceeds \$500. There can be no doubt that the defendant was "found" here. *Ex parte Schollenberger*, 96 U. S. 369; *Railroad Co. v. Harris*, 12 Wall. 65; *Gray v. Mining Co.*, 21 Fed. Rep. 288; *U. S. v. Telephone Co.*, 29 Fed. Rep. 17. Every requirement of the act of 1875, necessary to confer jurisdiction, is present. To dismiss the cause in such circumstances would be without precedent. Whether or not the action could have been brought in the state courts is a matter of no moment. The United States courts do not look to state legislation or the decisions of state tribunals for sources of

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