

table right. This court regarded the suit as one merely to enforce the vendor's equitable claim, and refused to entertain it. Upon appeal to the circuit the decision was affirmed. The opinion of JOHNSON, J., unpublished, is subjoined hereto.¹

The libel must be dismissed, but without costs.

¹THE AMELIA.

(Circuit Court, S. D. New York. July 19, 1877.)

POSSESSION—LEGAL AND EQUITABLE TITLES.

T. built the yacht A. for D., and thereafter accepted part of the purchase money, and was present when D. sold her to one H. by bill of sale, and performed other acts which indicated that he considered himself no longer the owner of the yacht; but the title had never passed from him by any instrument of transfer, or by absolute delivery, and he subsequently claimed the ownership. On suit brought by H. to recover possession, *held*, that the legal title had never passed from T., and, as against a legal title, an admiralty court will not undertake to enforce an equitable title.

In Admiralty.

JOHNSON, J. The facts found in this case appear in the findings placed on file, and, so far as the material question is concerned, do not differ in substance from those which appeared in the district court. The legal title to the vessel did not pass from Towns, the builder, to Doncomb by any instrument of transfer, nor was there any absolute delivery of the yacht. It was part of the agreement that a bill of sale should be executed when the agreement on the part of Doncomb was fully performed, and this time never arrived. The case, therefore, is substantially, as it is stated in the opinion of the district court, an attempt to enforce an equitable interest as against a legal title. This the court of admiralty does not undertake. When it proceeds in a petitory suit, it proceeds upon legal title. *Kellum v. Emerson*, 2 Curt. 79; *The S. C. Ives*, Newb. 205; *The John Jay*, 3 Blatchf. 67, 69; 2 Pars. Shipp. & Adm. 237, note 2. I do not find, and have not been referred to, any case which has been decided in this circuit, or in the supreme court of the United States, which holds a different doctrine; and I should be very unwilling to undertake to introduce a new and, at the least, a doubtful rule, in a case where my decision could not be reviewed, and would be a controlling precedent. If such a rule existed there could not fail to be numerous cases in which it must have been acted on. In *Ward v. Peck*, 18 How. 267, the claimant's case depended on matters clearly within the admiralty jurisdiction,—the power of a master to sell the ship,—and the libelant's had the legal title unless it had been divested by the master's sale; and their legal title was sustained. There are other cases of this class, but they are not thought to conflict with the views expressed in this case by the district court, and which I have adopted.

The decree must be affirmed, with costs.

THE CHARLES ALLEN.

(District Court, S. D. New York. March 10, 1885.)

1. TOWAGE—EVIDENCE—TOWAGE RECEIPT—CASTING OFF IN GALE.

The steam-tug C. A. took in tow the bark E., bound to sea from the lee of Staten island, to tow her down the bay of New York. The wind was high at the time, and the pilot of the tug, before starting, told the pilot of the bark that if the wind increased the tug would be obliged to cast off before reaching buoy No. 8, at the upper end of the Swash channel, and that the bark's pilot should be on the lookout for that contingency, to which the latter assented. The wind did increase until the tug was in imminent danger of swamping; whereupon she gave several short whistles, to indicate that she was about to leave the bark, and then cast off the hawser. The bark attempted to make sail and get to sea, but grounded on the Romer shoal. This suit was brought against the tug for not having taken the bark "to sea," as it was alleged she agreed to do, and for negligence in abandoning her in an improper and dangerous place. A towage receipt, reciting that the bark was to be taken "to sea for \$20," signed by one G., who procured the towage for the bark, and delivered to the master of the bark, was put in evidence. The \$20 was not paid. *Held*, that no authority was shown on the part of G. to bind the bark, and, moreover, that the receipt was superseded by the subsequent conversation between the pilots.

2. SAME—NEGLIGENCE—PERIL OF THE SEA—ERROR OF JUDGMENT.

Two courses were open to the bark in the place where she was cast off: to anchor, or to attempt to get to sea. She chose the latter, and events proved that it was an error of judgment on the part of her pilot. *Held*, that the tug was liable only on proof of negligence; that is, the want of such reasonable care and skill as the circumstances demanded. No negligence could be attributed to her for starting at the time she did. She continued to tow the bark up to the very last moment that her own safety would permit, and she cast off under an undoubted compulsion from perils of the seas, and in a position where the bark had a fair option to continue under sail or to anchor; and the libel was therefore dismissed.

In Admiralty.

Butler, Stillman & Hubbard and *W. Mynderse*, for libellant.

Benedict, Taft & Benedict, for claimants.

BROWN, J. At about 9 o'clock or a little after, on January 17, 1885, the Swedish bark *Elida*, lying off Staten island ready for sea, was taken in tow by the steam-tug *Charles Allen*, to be towed down the bay. The bark had on board a Sandy Hook pilot, between whom and the pilot of the *Charles Allen* there was a brief conversation in regard to the distance that the tug was expected to go. The pilot of the tug testified that he said to him that if the wind should increase much he would be obliged to cast off before reaching buoy No. 8, which is on the east side of the Swash channel, and that he was to be upon the lookout; and that the pilot of the bark assented. Two or three of the tug's hands confirm this account. The pilot of the bark testified that the pilot of the tug said that he would leave him at buoy No. 8. There was a gale blowing at the time from the south-west, but its severity was not felt in the lee of Staten island, where the vessel was then lying. At a quarter past 10, on reaching buoy No. 13, known as the Elbow buoy, below Staten island, the full force of the gale, which was then from the westward, began to be felt. The