

the exception of the navigation of the vessel for one trip, receiving all moneys, and presumably accounting therefor to the owner. The latter so dealt with him, not with the libellant. The answer of the owner, after such dealing, and after seizure of the vessel, asserting that libellant was master, carries no weight.

It is urged that the libellant should not be permitted to recover, for the reason that by his action in registering as master he has held himself out to the world as such, and others have dealt with the vessel supposing him to be master, and entitled to no lien on the vessel for his services. Whether the laws for the enrollment of vessels can be considered in the light of the recording acts of the state need not be determined, because here nearly, if not all, of the demands against the vessel accrued before the transaction complained of. There is no suggestion that any supplies were furnished or services rendered at the request of the libellant, or upon the faith of his being master of the vessel. The libellant's claim will be allowed as the first lien upon the fund in the registry of the court. There must, however, be deducted from the claim the amount expended by him to the use of the vessel, and the amount of his services upon the trip he actually served as master.

PARK v. THE HULL OF THE EDGAR BAXTER.

EVERY v. SAME.

(District Court, S. D. New York. November 30, 1883.)

MARITIME LIENS—SHIPWRIGHTS—COMMON-LAW LIEN—ASSIGNMENT.

A shipwright holding possession of a tug under his lien for repairs assigned his claim to E., still holding possession as the latter's agent. The owner filed a libel *in personam* to recover possession of the tug, without tender of the amount owing for repairs; and E. filed a libel *in rem* to enforce the claim for repairs. Held that, the contract being maritime, the claim and lien were transferable, and could be enforced in this court by the assignee; that the latter was entitled to a decree for the amount owing, and the owner to a decree for possession only on payment of that amount.

In Admiralty.

Wilcox, Adams & Macklin, for libellant Park.

Carpenter & Mosher, for libellant Every.

Wing, Shoudy & Putnam, for claimant in second suit.

BROWN, J. The first-named libel was filed by the owner to recover possession of the tug Edgar Baxter, possession of which was refused on the ground that she was held under a shipwright's lien for the expense of certain repairs made under contract, and for an additional sum for extra work.

The second libel was brought to enforce payment of the amount alleged to be due for the contract work and the extra work; the libellant

having taken an assignment of the repair claim and lien, and the shipwright still retaining possession as agent for Mr. Every, the assignee.

The evidence shows a *bona fide* assignment of the shipwright's claim and lien, to obtain moneys to pay bills that the shipwright had incurred in making the repairs. The repair bill being a maritime contract, it is considered, in this court, competent for a shipwright to transfer his common-law lien along with his claim, and to enforce such a lien at the suit of the assignee in admiralty for the sale of the vessel, or of the owner's interest in it, in order to satisfy the common-law lien. *The B. F. Woolsey*, 7 Fed. Rep. 108, 116; *The Two Marys*, 10 Fed. Rep. 919, 925; *Nash v. Mosher*, 19 Wend. 431; 3 Pars. Cont. (6th Ed.) 244; 2 Kent, Comm. 639. Both libels were, therefore, properly filed.

The libelant Park is entitled to possession of the vessel on payment of \$1,578, without interest; and Every is entitled to a decree in his suit for the same sum; and the costs of the two suits must be divided between the parties.

THE ONTARIO.

(District Court, E. D. Michigan. January 2, 1889.)

1. MARINE INSURANCE—THE POLICY—EXEMPTIONS—NEGLIGENCE OF INSURED.

Under a marine policy exempting the underwriter from liability for "all perils, losses, misfortunes, or expenses consequent upon, or arising from, or caused by, * * * the want of ordinary care and skill in navigating said vessel," the insured cannot recover general average expenses incurred in rescuing the vessel from a peril brought about by negligence in her navigation.

2. SAME.

Where a vessel was negligently run ashore, and, a storm coming on, was voluntarily scuttled to save her from total loss, and other general average expenses were subsequently incurred, *held*, that the stranding, and not the storm, was the proximate cause of the loss.

(Syllabus by the Court.)

In Admiralty.

This was a libel by the Northwestern Transportation Company, owner of the Ontario, against the Boston Marine Insurance Company, to recover a general average loss. The facts connected with this loss were substantially as follows: The propeller Ontario, valued at \$55,000, was insured against total loss and general average only in five companies, of which the respondent was one. The policy in suit contained the following exception to the general liability of the respondent as insurer:

"Excepting all perils, losses, misfortunes, or expenses consequent upon, or arising from, or caused by, the following or other legal excepted causes: * * * Damages that may be done by the vessel hereby insured to any other vessel or property; incompetency of the master or insufficiency of the crew, or want of ordinary care and skill in navigating said vessel, and in loading, stowing, and securing the cargo of said vessel; rottenness, inherent defects, overloading, and all other unseaworthiness; theft, barratry, or robbery."