

evident duty, in order to avoid collision from being swung round by the cross-current, which he knew was ahead of him, either to stop his boat in the slack water before reaching that cross-current, or else to have put the helm sufficiently to starboard before reaching the current to make sure that his stem would not be swung off by it. He did starboard his wheel more or less, and finally, but too late, put it hard a-starboard. There are discrepancies in his testimony as to the amount and time of his starboarding; and in one place he states distinctly that he did not starboard his wheel until he noticed his stem swinging to starboard, when abreast of the Garden City's paddle-box. As the cross-current must have struck his stem near the lower corner of pier 54, the strong starboarding, if delayed until that time, was too late. Whether the delay was caused by temporary inattention on account of the incident on shore, or by some other cause, is immaterial. It is sufficient to charge the Imperial with blame that, after the purpose of the Garden City to pass her was plain, and after she had partly passed her, hauling still further towards the shore, the Imperial continued on in very narrow quarters, and in the face of manifest danger, without either stopping earlier, or seasonably starboarding sufficiently to counteract the cross-current. Rule 22. I doubt the accuracy of some of the testimony, that she came up within two or three feet of pier 54. If she went so near as that, doubtless no starboarding could have withstood the effect of the cross-current; but if she did go so near, her fault is the more emphasized in keeping on without necessity and running into so dangerous a position. The libellant is entitled to a decree for half its damages.

WIGTON *et al.* v. THE BOMBAY.

(Circuit Court, E. D. Louisiana. May 31, 1889.)

MARITIME LIENS—SUPPLIES—CHARTER-PARTY.

Persons in a foreign port who furnish the charterers of a vessel coal necessary to the completion of the voyage, relying on the credit of the vessel for payment, in ignorance of the terms of the charter-party, have a lien on the vessel for the amount of the supplies, whether, under the charter-party, the charterers are owners *pro hac vice*, or are merely sailing it as agents of the owners.

In Admiralty. Libel for supplies. On appeal from district court, *ante*, 512.

Bayne, Denegre & Bayne, for libellants.

J. McConnell, for claimants.

PARDEE, J. Upon the facts of this case as presented by the evidence in the record, the decree of the district court should be affirmed. If, under the terms of the charter-party, the charterers became and were

the owners *pro hac vice*, as seems to be clearly and conclusively shown by the district judge in his two opinions in the record, then, confessedly, the libelants have a maritime lien for the supplies furnished. On the other hand, if, as the learned proctor for claimants contends, by the charter-party and the proceedings under it the owners did not part with possession, but remained in control of the ship, and as owners, through their own agents, sailed the ship for their own account, then the case shown is one where, in a foreign port, by owners' consent, (if not by their procurement,) the libelants furnished their ship, relying on its credit, with necessary supplies, without which the voyage could not be prosecuted, and which they, through their master, accepted and used for the benefit of the ship; on which state of affairs it would seem that, under the well-settled principles of maritime law, a maritime lien on the ship resulted. In suits where third parties, such as shippers and material-men, have dealt with the ship, and seek to hold owners or charterers personally liable, and in suits to adjust the rights, differences, and liabilities between owners and charterers, it may be material to settle the sometimes nice question whether by the charter-party, the owners retain possession and control of their own ship, or whether the charterers became, under such contract, the owners *pro hac vice*. But in cases where shippers or material-men, in a foreign port, who have dealt with the ship on its own credit, in the ordinary course of business, without notice of the terms of the charter-party, only seek to enforce the liens accorded by the general maritime law, I doubt if it is at all material to inquire what may be the terms and conditions of any charter-party existing between owners and charterers.

The following decree will be entered in this case: This cause came on to be heard upon the record of appeal, and was argued, whereupon, the court being advised in the premises, it is ordered, adjudged, and decreed that the libelants, Robert B. Wigton, William Wigton, and Frank N. Wigton, the partners composing the commercial firm of R. B. Wigton & Sons, do have and recover from the steam-ship Bombay the sum of \$1,868.75, with legal interest thereon from April 7, 1887, until paid, and all costs of suit in this court and in the district court. And whereas, on a claim made by A. B. Bolt, master and lawful bailee of the ship Bombay, the said steam-ship Bombay was released upon bond in the sum of \$2,500, with A. K. Miller & Co. as sureties thereon, it is further ordered, adjudged, and decreed that the said A. B. Bolt, master, and A. K. Miller & Co., sureties on the release bond, be condemned *in solido* to pay the aforesaid judgment, interest, and costs, and that execution may issue therefor within five days after signing this decree.

KATTEL *et al.* v. WYLIE *et al.* YOUNG v. SAME. HOWK v. SAME.

(Circuit Court, N. D. Illinois. June 3, 1889.)

1. REMOVAL OF CAUSES—PETITION—TIME OF FILING.

Under act Cong. March 3, 1887, § 3, as amended by act Aug. 13, 1888, providing that the application for removal of a cause to the federal court must be made at or before the time the defendant is by the laws of the state or the rules of court required to plead to the declaration, where defendants, their plea in abatement having been quashed, are required to plead to the merits *instanter*, but omit to do so, a petition for removal, filed nearly a month afterwards, is too late, and it is immaterial that plaintiffs did not take a default as they might have done.

2. SAME.

The fact that, 18 days after defendants ought to have answered, plaintiffs amended their pleading, is also immaterial.

3. SAME—SEPARABLE CONTROVERSY—JOINT TORT-FEASORS.

In an action of tort, in which plaintiffs' declaration charges all the defendants as jointly liable, there is no separable controversy, and it is immaterial that plaintiffs may not be able to prove such joint liability. The declaration must govern.

4. SAME—LOCAL PREJUDICE—APPLICATION, WHERE MADE.

An application for removal from a state court on the ground of local influence and prejudice must be made, and the question of fact tried, in the federal court.

At Law. On motion to remand.

J. L. High, for plaintiffs.

Haley & O'Donnell, for defendants.

BLODGETT, J. This case was removed by the defendant Wylie from the circuit court of Will county, in this district, where it was originally commenced, and is now before the court on a motion by the plaintiffs to remand. It is an action of trespass on the case, in which defendants are charged with the maintenance of a nuisance contiguous to the plaintiffs' premises, to the damage of the plaintiffs' property. Defendant Wylie claims the right to remove the case, so far as he is concerned, on the ground that he is a citizen of Iowa, and that plaintiffs are citizens of the state of Illinois, and that there is a separable controversy in the case as between himself and the plaintiffs; and on the further ground that by reason of prejudice and local influence he cannot have a fair trial in the state court. Several points are urged in support of the motion to remand: (1) That the petition for removal was not filed in apt time; (2) that there is no separable controversy in the case; (3) that the application for removal on the ground of local prejudice should have been to this court, and not to the state court, in which the suit was brought and pending.

As to the first point, it appears that the summons was served on the defendant Wylie on the 28th of December, 1888, returnable on the first day of the next January term, which was on the 7th of January, 1889, thus leaving 10 full days between the day of service and the return-day of the summons. The defendant Wylie appeared specially in the case, and moved to quash the service of the summons upon him. This mo-