THE ENTERPRISE.

Case No. 4,498.
{1 Lowell, 455.}[1]

District Court, D. Massachusetts. July, 1870.

COLLISION—WAGES.

A British vessel was libelled for collision, and her master, who was a part-owner, admitted the liability, and the vessel was sold. The proceeds were insufficient to pay the damage in full. The owners were solvent. *Held,* the seamen's lien on the proceeds would be postponed

to that of the libellant in conformity to the rule adopted by the British courts towards our vessels in like circumstances.

{Cited in The Orient, Case No. 10,569; Covert v. The Wexford, 3 Fed. 579; The Maria and Elizabeth, 12 Fed. 631; The Brantford City, 29 Fed. 384.}

The schooner Enterprise, owned in one of the British North American Provinces, was libelled in a cause of collision by the owners of an American vessel, and the master, who was the owner of three-eighths of the schooner, appeared and admitted the liability, and the damages were agreed at eleven hundred dollars. The gross amount realized from the sale of the schooner was eight hundred dollars. The master and one seaman now applied by petition to have their wages paid them out of the fund in the registry.

C. G. Thomas, for petitioners.

J. Lathrop, for libellants.

LOWELL, District Judge. By the law of the flag the master has a lien for his wages, which this court will enforce by comity: The Havana {Case No. 6,226}. But by the same law the lien of the seamen of a foreign vessel is postponed to that of a libellant in a cause of damage where the owners are solvent as in this case, and the proceeds are insufficient for the payment of both: The Linda Flor, Swab. 309; The Duna, 13 Ir. Jur. 358; Abb. Shipp. (11th Ed.) 621; The Benares, 7 Notes of Cas. Supp. L. The reasons assigned for this rule are that the seamen have other available remedies for their wages, while the injured vessel has, practically speaking, only this, and that the mariners of a wrong-doing ship may be supposed to share in the fault of the vessel. The argument is the stronger in this case because the seamen have a lien on the freight which has not been proceeded against in the collision cause, and so far as the master is concerned, being an owner, he is liable to the injured vessel to make good, to the extent of the freight, pending at the time of the disaster, the deficiency which the libellants suffer of a full restitutio in integrum. I believe no admiralty court of the United States has decided the general question of the order of priority of these liens, but in the case of a British ship, sold here, it is enough to know what law the courts of Great Britain administer in similar cases to our vessels. Petition dismissed.

[1] {Reported by Hon. John Lowell, LL. D., District Judge, and here reprinted by permission.}