

THE PRIDE OF THE OCEAN.

District Court, E. D. New York. March 16, 1881.

1. WAGES—MASTER OF FOREIGN
VESSEL—PRIORITY OF PAYMENT.

Where a British vessel was libelled for damages caused by a collision at sea, and was found in fault, condemned, and sold, and the vessel was also libelled by the master to recover his wages and disbursements:

Held, that if, by virtue of the English statute, the master is entitled to a lien upon the ship, his claim is not entitled to a priority of payment out of the proceeds in the registry over those for the damages caused by the collision.

In Admiralty.

W. W. Goodrich, for petitioner.

BENEDICT, D. J. The ship *Pride of the Ocean* was proceeded against in this court to recover damages caused by a collision. The decision of the court was that the collision was caused by the negligence of those in charge of the ship, and the ship was accordingly condemned. The proceeds of her sale proved insufficient to pay the damages caused by the collision. The master of the ship, who was on board and in command at the time of the collision, now applies to be paid the amount of his wages and disbursements out of the proceeds of the ship, in preference to the claims for damages caused by the collision.

Assuming that the master acquired a lien upon the ship for his wages and disbursements by virtue of the British statute, and assuming that he did not lose his lien by omitting to enforce his claim until after the decree had been entered for the damages caused by the collision, and by giving notice at the sale by the marshal that he insisted that she was sold subject to his claim for wages and disbursements, and would be held liable therefor, still, it is impossible to say that, in the distribution of the proceeds of the ship, the

master's claim is entitled to preference over that for the damages caused by the collision, for the reason that, having been the master of the ship at the time of the collision, he is personally liable for the damages caused by the collision; and all ²⁴⁸ payments out of the proceeds of the ship towards the damages caused by the collision go to reduce the amount of a liability on the part of the master which has been ascertained in this court and is enforceable in this court.

The petition is therefore denied.

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