bill, less $25, proved to have been paid, provided the facts proved show a subsisting lien upon the boat therefor. The facts proved to support the liens are that the vessel was a domestic vessel; that she was placed upon the libelant's dry-dock in Brooklyn for the purpose of there being repaired; that she was there repaired, and, up to the time of filing the libel, had not left the place where the repairs were done. No evidence of the filing of a specification of lien has been given. These facts show a lien upon the vessel by virtue of the provisions of the statute of the state of New York.

I do not understand the statute to require the filing of a specification of the lien, except in case the vessel depart from the port. No adjudged case to the contrary of this has been referred to, and I suppose no such case exists. I therefore hold the existence of a lien created by the state law to have been proved.

It may be added that the fact set up in the answer as a defense, namely, that the libelant took the vessel into his custody for the purpose of repairing her, and continued to hold her in his possession until taken possession of by the marshal by virtue of process in this action, seems to bring the case within the authority of the case of *The B. F. Woolsey*, 7 FED. REP. 110, according to which decision the libelant has a lien enforceable in admiralty, aside from the provisions of the state statute upon which the libelant has relied.

Let a decree be entered in favor of the libelant for the sum of $258.55, with interest from June 1, 1880, a costs.

THE TIGER LILY.*

(*District Court, E. D. New York.* November 14, 1882.)

1. NEGLIGENCE—PROOF OF DAMAGES.

   On a reference to ascertain the amount of damages resulting from negligence, the libelant is bound to prove not only the injuries sustained, but also the amount of money necessary to repair such injuries; and an estimate including repairs not proved to have been made necessary by the accident, cannot be taken as proof of the amount of damages.

2. COSTS ALLOWED.

   Where the libelant succeeded upon the issues, costs were allowed him, even though he recovered less than the amount claimed.

In Admiralty.

*Reported by R. D. & Wyllys Benedict.

Oscar Frisbie, for libelant.

Scudder & Carter, for claimant.

BENEDICT, D. J. The evidence introduced to show the cost of repairing the injuries to the libelant's boat is the estimate of the carpenter, Marshal. This estimate included repairs not proved to have been made necessary by the accident in question, and cannot therefore be taken as proof of the amount of the libelant's damages. The libelant was bound not only to prove the injuries sustained, but also the amount of money necessary to repair such injuries, and he has failed to prove any greater amount than that allowed. The commissioner correctly limited his report to the sum of $45, as the proof stands. The libelant's exceptions to the report are accordingly overruled.

The claimant's motion to be relieved from costs must be denied. The only ground for asking to be relieved from costs is that the libelant recovers less than the claimant offered to pay him before the institution of the suit. But no tender or offer to pay anything was made after the suit was commenced, and the case was strenuously contested upon the question of negligence. Upon that question the libelant recovers. There is not here a failure to succeed upon the principal questions put in controversy. In this case the libelant succeeds upon all the issues, but recovers less damages than he claimed. Moreover, to give him costs will do no injustice to the claimant, for the proofs indicate that the claimant's liability, limited as it is by this decision, will be less than it might have been under a different condition of the evidence.

Let a decree be entered for the amount reported due, with interest to date and costs.

See 11 FED. REP. 744.

FARMERS' NAT. BANK OF PORTSMOUTH, O., *v.* HANNON, Adm'r, etc.*

(*Circuit Court, S. D. Ohio, E. D.* January 3, 1883.)

SUBROGATION—NECESSARY PARTIES.

Where certain stockholders of a corporation had entered into an agreement among themselves that they would "each be responsible in mutual degree for all paper negotiated by the agent of the company," and in case any paper of the company should be negotiated with the individual indorsement of one of the parties thereto, and be unprotected by the agent of the company, then they would be "each and severally bound for the payment of such paper in mutual proportions;" and subsequently the corporation, by its agent, executed its promissory note to one of the parties to said agreement, by whom it was indorsed to another, who, in due course of trade, negotiated it, and no part of said note had been paid,—upon bill filed by the holder of such note against the administrator of one of the parties to said agreement, alleging the insolvency of the maker and indorsers of such note, and asking a decree for the entire amount thereof against defendant, *held*, that (1) as either of said indorsers could, if he had paid said note, have maintained an action against his co-contractors for their proportionate shares, the complainant was entitled to be subrogated to their rights; and (2) there was a defect of parties, the corporation, which was primarily liable for said note, and the defendant's intestate's co-obligors in said agreement, being necessary parties to a complete and final determination of the controversy.

In Equity. On demurrer.

Coppock & Coppock and *Stallo, Kittredge & Shoemaker*, for complainant.

E. A. Guthrie, for defendant.

BAXTER, C. J. It appears from complainant's bill that defendant's intestate was a shareholder in the Boone Mining & Manufacturing Company, a corporation organized under the laws of Kentucky, and that in order to enable said corporation to borrow money he entered into a contract with John Wynne, J. W. G. Stackpole, and other co-shareholders, as follows:

"CINCINNATI, February 21, 1871.

"We, the undersigned, shareholders of the capital stock of the Boone Mining & Manufacturing Company, hereby mutually agree with each other that they will each be responsible in mutual degree for all paper negotiated by the agent of the company for the use and benefit of the company; and should any paper be negotiated by the agent with the individual indorsement of one member, and be unprotected by the official agent by reason of a want of funds, then in such case the parties to this agreement shall be each and severally bound for

*Reported by J. C. Harper, Esq., of the Cincinnati bar.