

WHITE v. TWO HUNDRED AND NINETY-TWO THOUSAND THREE HUNDRED DOLLARS, Proceeds of the Steam-Boats Americus, etc.¹

(District Court, E. D. New York. December 28, 1883.)

1. SHIP'S HUSBAND—LIEN—PROCEEDS OF SALE OF VESSEL.

There is no lien on moneys, the proceeds of the sale of steam-boats, in favor of one who acted in the capacity of ship's husband, for sums paid by him in satisfaction of demands claimed to be at the time subsisting maritime liens on the vessels, such proceeds not being in his hands.

2. SAME—EXCEPTION TO LIBEL.

Exception to a libel claiming such a lien on proceeds of certain vessels was sustained and the libel dismissed.

In Admiralty.

D. & T. McMahon, for libelant.

Blair, Snow & Rudd, (*R. D. Benedict*, of counsel,) for respondent.

BENEDICT, J. This case comes before the court upon exception to the libel, upon the ground, among others, that the libel fails to state facts, showing the libelant, R. Cornell White, to have a lien upon the moneys proceeded against. These moneys, as the libel shows, are the proceeds of certain steam-boats, of which vessels the libelant was ship's husband. The claim sought to be enforced against these moneys consists of various sums paid from time to time by the libelant, while acting in the capacity of ship's husband, in satisfaction of certain demands, which were at the time, as the libelant claims, subsisting maritime liens upon the respective vessels. Upon this statement the libelant had no lien upon the vessels, and has none upon the proceeds, not being in his hands. The authorities are clear to the effect that a ship's husband has no lien upon the ship for sums paid by him in satisfaction of the ship's bills. *The Larch*, 2 Curt. C. C. 427; *The Sarah J. Weed*, 2 Low. 556; *The J. C. Williams*, 15 FED. REP. 558. These cases are decisive of the present case. If authority were wanting, my opinion would still be adverse to the libelant. The libelant cannot maintain this action if he could not maintain an action against the vessels themselves, and there are, in my opinion, strong considerations which should forbid a ship's husband to acquire, as against his principals, a lien upon their vessel for payments which he is employed to make for them, and which he makes for a compensation paid him.

This exception to the libel is therefore well taken, and the libel must be dismissed, with costs.

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.

MOSHER v. ST. LOUIS, I. M. & S. RY. CO.¹*(Circuit Court, E. D. Missouri. March 24, 1884.)***REMOVAL OF CASES FROM STATE COURTS TO THE CIRCUIT COURT OF THE UNITED STATES.**

Either party may remove into a circuit court of the United States any case where the controversy is between citizens of different states.

Motion to remand a case removed to this court from the circuit court of Jefferson county, Missouri, at the instance of the defendant who is a resident of Missouri.

William M. Eccles and *E. P. Johnson*, for plaintiff.

Bennett Pike, for defendant.

TREAT, J. The court is referred to sections of the Revised Statutes which embraced all statutes prior to December 1, 1873. Since then the act of March 3, 1875, has enlarged the jurisdiction of the federal courts, whereby either party may remove into a circuit court of the United States any case where the controversy is between citizens of different states.

The motion to remand is overruled.

ALBRIGHT and others v. OYSTER and others.¹*(Circuit Court, E. D. Missouri. January 21, 1884.)***EQUITY—RESULTING TRUSTS—PARTIES.**

A., B., C., and D. had an interest in certain lands. D. died, and E. qualified as his executrix, and in that capacity agreed with A., B., and C. that the land should be divided, and C.'s share conveyed to X. in trust for C.'s children. The division was made, and C.'s share was conveyed to X. under an oral agreement that he would hold it in trust for said children; but the deed was absolute on its face, and recited a consideration, though none was paid by X. X. afterwards, without consideration, made an absolute conveyance of said property to A. A. then brought suit in ejectment against C., who held possession of said property for his children, and recovered judgment. In a suit brought by C. and several of his children, in equity, to have said judgment at law restrained, and for other relief, *held*:

(1) That said conveyance to X., under said oral agreement, had caused a resulting trust to arise in favor of C.'s children, and that X. held subject thereto.

(2) That A. received the legal title to said property from X., subject to said trust.

(3) That E., as executrix of D., and B. were both proper parties.

In Equity. Demurrers and plea to the bill, and exceptions to answer.

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.