

only could have had the right to recover, and then, as she denied that the schooner belonged to the succession of Cietcovich, no one could recover. The answer to this appears in the record. Cietcovich, July 10, 1883, sold the schooner to Popovich, and on the thirteenth of July, transferred to him, by order on his attorney, the claim for damages in suit, and on November 13, 1883, on showing that the said libellant "did transfer his interest in above-entitled cause to M. Popovich, of this city as will appear by document on file, it is ordered by the court that said Popovich be subrogated to all the rights of said Cietcovich in said suit." The record does not show when Cietcovich died, but his widow swears to the sale and transfer by him to Popovich, and on all the showing made there can be no doubt that proper parties are before the court, and that Popovich is properly subrogated and entitled to judgment in the case.

A decree will be entered in the same terms as that appealed from, with costs of this court added.

THE CITY OF MACON.

RAMSAY v. THE CITY OF MACON.

(District Court, S. D. New York. March 30, 1884.)

1. ADMIRALTY—COLLISION—WHARVES AND SLIPS—PROPELLER IN MOTION—CARGO.

A steamer having a propeller in motion while lying inside a slip is bound to be prepared to stop it upon being hailed from other boats whose safety requires it.

2. SAME—CASE STATED—CARRIER—DAMAGES.

Where the canal-boat Y. came into the slip where the City of M. was lying with her propeller in motion, shortly before her departure, and the captain of the Y. hailed the steamer to stop her wheel, but she did not do so, and the Y. was drawn by the suction against the wheel of the engine, *held*, that the steamer was in fault; but it appearing also that the captain of the Y. was acquainted with the slip, and the customary starting of the propeller before the steamer sailed; that he might have seen it before coming along-side, and might also have proceeded further up the slip and out of danger, instead of stopping to fasten along-side another barge: *held*, that the captain of the Y. was also negligent, and that the damages should be divided. *Also held*, that, being liable as carrier of the cargo, he might recover also for one-half the loss of the cargo.

In Admiralty.

Carpenter & Mosher, for libellant.

John E. Ward, for claimants.

BROWN, J. The cases of *The Nevada*, 106 U. S. 154, S. C. 1 Sup. Ct. Rep. 234, and *The Colon*, 8 Ben. 512, show that the claimant's vessel must be held in fault for not being prepared, while their propeller was in motion in the slip, to stop at once upon being hailed, as

they were, by the captain of the libelant's boat. But the captain of the Yorktown must also be held in fault. He was acquainted with the slip where for years the claimants' steamers had been in the habit of lying, and from which they left for sea at regular hours, being always accustomed to use their propeller for a time before starting. The Yorktown entered the slip at about the time of the steamer's starting, and her captain must not only have known of the customary use of the steamer's propeller within the slip and the dangers attending it, but the motion of the propeller itself and the stir of the water could not fail to be noticeable had the captain attended to it as, under such circumstances, he was bound to do in going into the slip at that time. Nor am I satisfied that he did not, in fact, know that the propeller was in motion before he fastened his stern line. There was no reason why he should not have followed on after the Vosburgh, which immediately preceded him, past the Macon, and towards the bulk-head, into a place of entire safety. His stopping immediately abreast of the City of Macon, and within but a few feet of her, under the circumstances stated, I cannot help regarding as obvious negligence and want of prudence on his part, which charge him with joint negligence contributing to the accident.

In respect to the cargo, the libelant will evidently be responsible for its delivery, and he is, therefore, entitled to recover one-half of the injury to the cargo as well as to the boat. If the parties do not agree on the amount, let a reference be taken to ascertain the amount, with costs to the libelant.

THE JENNIE B. GILKEY.

LOUD and others v. LORING and others.

(Circuit Court, D. Massachusetts. April 28, 1884.)

LIEN ON SHIP—NONE ATTACHES IN FAVOR OF ONE CO-OWNER.

A part owner has no lien or right of priority in equity upon the ship itself for balance of account which may be due him.

In Equity.

C. T. & T. H. Russell, for complainant.

C. M. Reed, for defendant.

LOWELL, J. The plaintiffs, citizens of New York, bring this bill against certain citizens of states other than New York, for an adjustment of accounts between the parties as common owners of the schooner Jennie B. Gilkey. The plaintiffs allege that they made certain advances for the benefit of the defendants, to enable the vessel to perform her last voyage and earn her freight; and made certain other payments in defending and compromising an action brought against the owners in New York for the wages of the mate. They now move for a preliminary injunction to restrain the defendants from receiving from the registry of the district court their several shares of the proceeds of the vessel, amounting, after payment of the privileged debts, to about \$2,900. The plaintiffs admit that they have no privilege in admiralty, nor any right as creditors at large, having recovered no judgment, to intercept these proceedings; but they insist that, in equity, one part owner has a lien upon the ship for advances which he may have made for supplying her needs for a voyage, or for the benefit of his co-owners in any other respect. This brings up the question whether the decision of Lord HARDWICKE in *Doddington v. Hallett*, 1 Ves. Sr. 497, is to be taken as law here. It was long since overruled in England. See *Ex parte Young*, 2 Ves. & B. 242, and 2 Rose, 78, note; *Ex parte Harrison*, 2 Rose, 76; *Ex parte Hill*, 1 Madd. 61; *Green v. Briggs*, 7 Hare, 279, per WIGRAM, V. C.; Lindl. Partn. (4th Eng. Ed.) 67. In this country it has been held in the courts of New York and Kentucky to announce a sound rule of equity. *Mumford v. Nicoll*, 20 Johns. 611; *Hewitt v. Sturdevant*, 4 B. Mon. 453; *Pragoff v. Heslep*, 1 Amer. Law Reg. 747. In some other courts the later English rule has been thought the more sound. *Merrill v. Bartlett*, 6 Pick. 46; *The Randolph*, Gilp. 457; 3 Kent, Comm. 40; Story, Partn. §§ 442-444, and notes; Story, Eq. § 1442, and note. In this circuit, two judges of the supreme court have said that a part owner has no lien or right of priority in equity upon the ship itself for a balance of account which may be due him. *Macy v. De Wolf*, 3 Wood. & M. 193; *The Larch*, 2 Curt. C. C. 427, 434. And while Mr. Justice STORY, in one of the works above cited, seems to

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