

THE EDWIN BAXTER.¹
PARK *v.* THE HULL OF THE EDWIN BAXTER.

District Court, S. D. New York.

June 21, 1887.

1. ADMIRALTY—PRACTICE—INTERROGATORIES.

Under admiralty rule 28 of the supreme court, which requires libelant's interrogatories to be propounded "at the close of the libel," libelant may not, of course, propound interrogatories to the claimant after the filing of the answer.

2. SAME—AMENDMENT OF LIBEL.

The libelant's proper practice is to apply to the court for leave to amend his libel, and to add at the close of the amended libel the desired interrogatories.

3. SAME—RULES.

Rule 99 of this court is controlled and superseded by rule 28 of the supreme court.

In Admiralty.

Wilcox, Adams & Macklin, for libelants.

Carpenter & Mosher, for claimants.

BROWN, J. The claimants having in their answer interposed new matter in avoidance of the allegations of the libel, the libelants propounded interrogatories, under rule 99 of this court, which permitted interrogatories to be propounded by "either party to the other within four days from the putting in of the claim or answer or other pleading." The claimants, under rule 100, have objected to these interrogatories on the ground that they are not allowable under the provisions of the twenty-third rule of the supreme court in admiralty. Rule 99 regulated the practice in this district prior to the adoption of the twenty-third rule of the supreme court in 1844. The latter covers the same general ground as the former; and in the restrictions interposed, requiring the libelant's interrogatories to be propounded "at the close of the libel," it controls and supersedes the former rule of this court. The practice is essentially the same as that in equity, in which the interrogatories are limited to the subjects contained in the libel. Rule 51 of the supreme court, promulgated in 1854, affords to the libelant, in cases like the present, the desired relief in another form, namely, through an amendment of his libel upon application to the court. To such an amended libel, when allowed, the desired interrogatories can be regularly added, under rule 23. See *Taber v. Jenny*, 1 Spr. 315, 316; *Gladding v. Constant*, Id. 75, note; *The David Pratt*, 1 Ware, 497.

The objections to the present interrogatories must, under the rule, therefore, be sustained, and the interrogatories disallowed, except upon an amendment of the libel.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.