those to whose rights he has succeeded, held the vessel. Pate's lien is prior in date to the Bradley mortgage, under which O'Connell claims. It was also first recorded, and the priority of lien thereby conferred and acquired is only to be defeated by an affirmative showing on the part of the appellant that some one or more of the owners or purchasers of the vessel through or under whom he acquired his title or lien were such *bona fide* purchasers for value, without notice, as to cut off and defeat Pate's lien. Neither the intervening petition of appellant nor the findings of the special master's report make out such a showing.

There is no error in the judgment of the lower court, and the same is affirmed, with costs of this court to be taxed against appellant and sureties on bond for appeal. The appellee, Pate, will be allowed interest on the amount awarded him, and the cause will be remanded to the district court to proceed with the distribution of the funds in the registry of that court arising from the sale of the W. B. Cole, in conformity with its decree in the premises, and with an allowance to Pate of interest on the same, to be decreed to be paid to him since date of said decree.

THE YAMOIDEN.[1]

SPICER *et al. v.* THE YAMOIDEN.

(District Court, E. D. Pennsylvania. February 2, 1892.)

1. SEAMEN—"DISRATING" BY MASTER—EVIDENCE.
The "disrating" of certain seamen by the master was sustained by his testimony and the mate's, but was contradicted by the testimony of each seaman disrated, as regards himself, but not as regards the other seamen. The appearance of the seamen did not impress the court favorably. *Held*, the disrating would be accepted by the court in computing the wages due.

2. CHARGES AGAINST STEWARD—BREAKAGE.
A charge for "breakage" against a vessel's steward is unusual, and will not be allowed.

In Admiralty. Libel by Henry Spicer, Peter Peterson, Paul Hanson, George Peterson, and George Henry against the bark Yamoiden, to recover wages. Decree for libelants.

Alfred Driver, for libelants.

John A. Toomey, for respondents.

BUTLER, District Judge. It is difficult to reach a satisfactory conclusion from the evidence presented. If the libelants' offer to submit the controversy for settlement to the shipping commissioner had been accepted, the chances of reaching a just result would have been increased. With

[1] Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

the parties before him, in person, that officer would have had a better opportunity of getting at the truth than the court (with depositions alone to look to) can have.

While I feel reluctant to accept the master's "disrating" of some of the men, the evidence does not seem to justify a disregard of it. His testimony and the mate's sustain it, and while each of the libelants contradicts this testimony so far as respects himself, they do not testify for each other to a material extent; and what I saw of these men at the trial of their prosecutions against the master, did not impress me favorably. The settlement must be based therefore on the rates which the master has fixed—as shown by the log and his testimony.

The charge against Henry, the steward, of $10 for breakage, should not be allowed. Such charges are unusual; and if he assented to it as the master testifies, it was in view of the prospect of an immediate settlement—which he could only obtain by assenting to the master's terms.

The other items of charge against him, as well as those against his co-libelants, must be allowed. The account kept by the master is more reliable than their memories.

A decree will be entered in favor of the libelants as follows: For Spicer $121.92; for Peter Peterson $96.55; for Hanson $39.95; for George Peterson $48.59; for Henry $264.06; whereof $24 for the use of Thompson—to whom he gave an order which the master accepted for that amount—this sum of $24 to be paid to Thompson or to Henry on presentation of the order. Respondent to pay the costs. The $25 charged for advancement to each libelant, on shipment, I understand to be abandoned; if it is not, it is disallowed. It was not paid, and should not have been charged.

STATE OF TEXAS v. DAY LAND & CATTLE CO.

(Circuit Court, W. D. Texas, Austin Division. March 5, 1892.)

1. REMOVAL OF CAUSES—CRIMINAL PROCEEDING—REMAND—AMENDMENTS.
An action brought by the state of Texas to recover the penalty prescribed by Act Tex. Feb. 7, 1884, for unlawfully appropriating public lands, having been removed to the federal court, was remanded on the ground that the proceeding was of a criminal nature, and not removable. Afterwards the complaint was amended so as to ask additional damages under that law, and a second count was added, setting up, in the alternative, a civil cause of action for the reasonable value of use and occupation, the removal of inclosures, etc., under Act Tex. April 1, 1887. *Held*, that the original cause of action remained distinct from the case made by the second count, and was not so combined with it as to permit the removal of the whole case. *Huskins* v. *Railway Co.*, 37 Fed. Rep. 504, and *Evans* v. *Dillingham*, 43 Fed. Rep. 177, distinguished.

2. SAME—SEPARABLE CONTROVERSIES—CITIZENSHIP.
The clause of the removal act relating to separable controversies is applicable only to controversies between citizens of different states, and is not available to the defendant when the opposite party is a state.

3. SAME—FEDERAL QUESTION.
The clause of the removal act authorizing the removal of civil suits, arising under the constitution or laws of the United States, relates only to the entire action, and does not permit the removal of a part thereof when the rest is not removable.

At Law. Action by the state of Texas against the Day Land & Cattle Company. Heard on motion to remand to the state court. Granted. For former report, see 41 Fed. Rep. 228.

C. A. Culberson, Atty. Gen., for the State.

Fisher & Townes and *West & McGown*, for defendant.

Before MAXEY, District Judge.

MAXEY, District Judge. This suit was originally instituted by the state against the defendant in the district court of Travis county, Tex., on the 22d day of September, 1888. On the 4th day of October, 1888, a petition and bond for removal of the cause were filed in the state court, and the record seasonably entered in this court. A motion to remand was made by plaintiff, and, the same being granted, the suit was remanded to the state court for trial. In that court, and subsequent to the remanding order, the plaintiff filed two amended petitions, the first June 24, 1891, and the second October 12, 1891. On the same day, October 12, 1891, the defendant filed a second petition and bond for removal, and the record was duly entered here January 30, 1892; and the plaintiff now moves to remand the cause again to the state court. The cause of action relied upon by the plaintiff in its original petition is fully stated by Judge PARDEE in an opinion rendered by him when the case was formerly before the court. *State* v. *Cattle Co.*, 41 Fed. Rep. 228. In the original petition it is alleged, in effect, that plaintiff was the owner of 203,000 acres of land in Greer county, which defendant appropriated to its own use without lawful authority, for the purpose of herding and grazing 20,000 head of cattle and 1,000 horses. It is further averred that—