

sections 1 and 2 of the act of 1884 as a mere substitute for sections 13 and 14 of the former act, it follows that the provisions of section 16 of the act of 1853 remain in force.

The amount of pilotage allowed under both acts is to be computed according to the draft at certain rates "per foot." The practice under both acts has always been to recognize in the computation fractions of a foot, and to reckon to a half foot or to the even foot, to whichever the actual draft in inches might be nearest. In later years upon the demand of the Wilson line the proportions of a foot have been computed and allowed for according to the exact draft in feet and inches.

In the present case the bill was rendered to the master and approved, as for 26½ feet, the actual draft being 26 feet 5 inches. The usual practice is evidently one that carries out equitably the general intention of the law. I know of nothing that forbids computation for fractions of a foot; and the usual practice to make a rest at the half foot, and to compute the rates according to the even foot or the half foot, whichever is nearest the actual draft, is recommended by its practical convenience. The rule works in no way unjustly to the ship, or to the advantage of the pilots; and the difference between the results afforded by that rule and an exact proportionate measurement, is so small as to fall within the maxim *de minimis non curat lex*.

Decree for the libellant for the bill as rendered, with three dollars additional under sections 17 and 21 of the act of 1853, with interest and costs.

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#### THE ERASTINA.

#### THE ELM PARK.

#### HARRIS v. THE ELM PARK AND THE ERASTINA.

(District Court, S. D. New York. April 2, 1892.)

##### 1. MARITIME LIENS—TOWAGE.

Towage services are presumptively a lien on the vessel. It is for the claimant to prove a personal credit only, or to show circumstances that negative a credit to the vessel.

##### 2. SAME.

On the evidence in this case, *held*, that the towage services were rendered on the credit of the vessel.

In Admiralty. Libel for towage.

*Hyland & Zabriskie*, for libellant.

*Carpenter & Mosher* and *A. A. Wray*, for claimant.

BROWN, District Judge. The only point litigated is whether the towage service was a lien upon the boats. The service sued for was rendered upon several trips during the month of July, 1891. Similar services had been rendered prior to July under a contract with one

Symonds, who was not the owner of the boats; but Symonds paid the libelant in full up to the 1st day of July. In the month of June the owner of the scows by a written contract with Symonds agreed to take the place of Symonds in the business for which the scows were engaged, and to assume his obligations. The claimant desired the libelant to accept him in place of Symonds as respects the pay for towages, which the libelant, not then knowing that the claimant was the owner of the scows, refused to do, except upon Mr. Symonds' security. On the 11th of July, being informed that the claimant was the owner of the scows, and being told by the claimant that the scows should stand as security for his towage, the libelant agreed to deal with the claimant on the same terms as those on which he had previously dealt with Symonds, dating as from the 1st day of July, and therefore including the intermediate towages; but this agreement was on condition that the claimant should pay the libelant's bill against Symonds up to July 1st, for which the claimant then held a check from Symonds for the libelant's benefit, to which the claimant agreed; and at the same time the libelant released Symonds from his contract and from his personal liability for the previous towages. The claimant, however, instead of delivering to the libelant the check given him for the libelant's benefit, used it for his own benefit; and it was not until long afterwards that the libelant received from Symonds the amount due to him for towages up to the 1st of July. For this reason the written contract between the libelant and claimant, though drawn up, was never executed and delivered; but under the verbal arrangement above recited, the towages were continued upon the claimant's orders. Nothing has been paid on account, and this libel was filed for the towages after the 1st day of July.

Towage services are presumptively a lien upon the vessel. It is for the claimant to prove a personal credit only, or to show circumstances that negative a credit of the vessel. The evidence, however, leaves no doubt that the towages from and after July 11th were on the express credit of the scows. For such services as had been previously rendered between that date and the 1st of July, the claimant had given to the libelant his individual orders for the towage. The claimant was also not only the owner of the scows, but he was in fact the principal in the business for which the scows were used, since he had assumed Symonds' place under the contract previously executed with him. In addition to that, the evidence shows that on the 11th of July the claimant agreed that the scows should be security to the libelant for his towages between that date and the 1st of July, as well as for future towage; and on the faith of this agreement the libelant released Symonds from liability for the prior towages since July 1st. These circumstances are abundant grounds for a lien upon the scows for the services previously rendered between July 1st and 11th, whether there was already a lien therefor or not. The failure to execute and deliver the written contract drawn up between the libelant and the claimant, in consequence of the latter's wrong conduct, does not affect the libelant's claim or lien for what was actually done by him on the faith of the verbal agreement.

The disputed item for demurrage in June can no longer be litigated, as it was settled by Symonds; the item for demurrage in July is not established.

Decree for the libellant for the amount claimed, with interest and costs.

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WHITCOMB v. EMERSON *et al.*

(District Court, D. Massachusetts. April 12, 1892.)

1. **LIMITATION OF LIABILITY—FISHING VESSEL—"FREIGHT PENDING"—SEASON'S CATCH.**  
In the case of a fishing vessel run under an agreement by which the cost of repairs is deducted from the proceeds of the entire catch before division, a season's cruising is to be counted as a single voyage, and the earnings for the whole season's fishing are, equally with the vessel, liable for the cost of repairs contracted on the vessel's account. Hence, when such vessel was wrecked, and her owners, on suit by a material-man, claimed to limit their liability to the value of the wreck, *held*, that their liability was measured by the season's earnings added to the value of the wreck.
2. **SAME—PART OWNERS—"PRIVITY OR KNOWLEDGE"—ACT JUNE 26, 1884.**  
Where repairs were ordered by a ship-master, who was also one of three equal part owners of a vessel, without the privity or knowledge of the other owners, *held*, that the master was liable for the whole debt, and the other two owners were each liable for one-third of it, under Act June 26, 1884, § 18.

In Admiralty. Libel to recover the value of repairs furnished to respondents' vessel.

*Carver & Blodgett*, for libellant.

*Owen A. Galvin*, for respondents.

NELSON, District Judge. This case is a libel *in personam* by a material-man to recover \$165.35 for repairs furnished to the fishing schooner William Emerson, owned in equal shares by the three respondents, Emerson, Whalen, and Rhoderick. The repairs were furnished in the months of January and February, 1890, at Provincetown, on the credit of the vessel, to fit her for shore fishing during the coming season, and were necessary. After being fitted out, the vessel cruised during the entire season, making numerous trips, and selling her fares in the Boston market. The proceeds were divided between the owners and sharemen according to what is known as the "Provincetown lay," by which the costs of repairs is included in the great generals, and deducted from the entire catch in the first instance, before division. At the close of the season the vessel was sent to Provincetown, to be laid up for the winter, her value then being \$5,000. Instead of laying her up, as directed by Emerson, who was the managing owner, the respondent Rhoderick took her out on a fishing trip, and while out she was wrecked on Cape Cod. The wreck was sold for \$303.50. Other debts to a considerable amount are also outstanding against the vessel.

The act of June 26, 1884, (23 St. p. 57,) provides "that the individual liabilities of a ship-owner shall be limited to the proportion of any and all debts and liabilities that his individual share of the vessel bears