the ownership of the yacht, arising out of the original bailment, (Story, Bailm. §§ 436–440;) and that right passed to the vendee on payment of the price agreed on, or a reasonable compensation. This right was confirmed by his letter of January 4th. There is no controversy here as to the right, and the offer, of payment for that service. Hawkins was, moreover, a bidder at the sale. It was legally incumbent upon him to launch the yacht, if required, within a reasonable time in the spring after notice, for a reasonable and just compensation, and in time for repair before the 1st of June; and if he would not launch her himself, the original bailor or purchaser at the sale had probably by legal implication a license to remove the yacht himself, and for that purpose to make all preliminary temporary repairs to the yacht that were necessary to enable her to float. However that may be, the course pursued by Mr. Hawkins was manifestly vexatious and obstructive, and, I must find, intentionally so. This made the filing of the libel necessary in order to secure to the libelant the removal of his yacht and a recovery of damages for its detention, in case it was not launched by Hawkins in time for repair by the 1st of June. A decree may, therefore, be entered that the libelant have possession of the yacht to be launched by the defendant Hawkins, and that the libelant recover of him damages for the detention of the yacht at the rate of eight dollars per day from the 3d day of May, 1893, until such launching is effected, and the yacht delivered, that being the latest date which, upon the evidence, could be reasonably allowed to Mr. Hawkins for the fulfillment of his obligation; the libelant to pay on delivery the price of storage as agreed on, and the reasonable cost or price of launching, less the damages here allowed.

WILLIAMS v. PROVIDENCE WASHINGTON INS. CO.

(District Court, S. D. New York. April 28, 1893.)

1. ADMIRALTY—JURISDICTION—ACTION TO REFORM INSTRUMENT.
   An admiralty court has no jurisdiction of an action to reform a policy of marine insurance.
2. SAME—SUIT ON WRITTEN INSTRUMENT—FALSE REPRESENTATIONS ANTERIOR TO MAKING INSTRUMENT.
   A suit brought upon a policy of marine insurance, where the loss occurred outside of the express limits of the policy, and the complaint is based upon alleged false and fraudulent negotiations leading up to the making of the policy, is not within the jurisdiction of a court of admiralty.

In Admiralty. Libel by Samuel Williams against the Providence Washington Insurance Company to recover under a policy of marine insurance. On exception to the libel. Exceptions sustained, and libel dismissed.

Peter S. Carter, for libelant.
Hyland & Zabriskie, for respondent.

BROWN, District Judge. The libel is filed to recover under a policy of insurance issued by the respondent on the 14th day of

May, 1891, for one year thereafter, upon the canal boat General Williams, against perils of the sea. The canal boat was damaged by sea perils in Long Island sound, at a dock at Stanford, Conn. The printed part of the policy contained the words:

"To be confined to the general freight business in the navigation of the rivers and canals of the state of New York, the port, bay, and harbor of the city of New York, not outside of the Narrows. * * * Warranted not to go on the East river beyond the southwesterly end of Blackwell's island. * * * With liberty to use the Harlem river and Port Morris."

These provisions were followed by a clause specially stamped in the policy, in the following words:

"Lay-up clause waived, but during the period named therein confined to the port, bay, and harbor of New York, as described, both the North and East rivers, and the adjacent inland waters of New Jersey."

The place where the canal boat sustained the loss by sea perils, was not within the port, bay or harbor of New York, nor within any of the limits described in the policy. The libel charges that the policy was designed to cover navigation in Long Island sound, and that when the premium was paid, the libelant, in answer to inquiries, was assured by respondent that it did cover navigation in the sound; and that, relying upon these representations, the policy was accepted and the premium paid; that the first intimation libelant ever had that the policy did not cover the Sound was after the loss, when respondent refused to acknowledge any liability, or to attend to the survey of the damage. The libel thereupon alleges that the above statement was falsely and fraudulently made; that the libelant has duly complied with the conditions of the policy, and asks damages of the respondent in the amount of the loss.

The exceptions to the libel for lack of jurisdiction of the cause of action stated in the libel must be sustained. The libel does not in terms seek to reform the policy. If it did, that could not be done in this court, but only by a court of equity, upon a bill filed for that purpose. Of such an action this court would have no jurisdiction. Andrews v. Insurance Co., 3 Mason, 6, 16. The present action cannot be sustained upon the terms of the policy itself, because the loss occurred outside of the express limits of the policy. The complaint is, in fact, an action for false and fraudulent representations, by which the libelant was induced to accept the policy, supposing that he was insured for the Sound, when he was not. Such an action is not upon the policy itself, but upon the negotiations leading to it. It is not brought like The Electron, 48 Fed. Rep. 689, for any misrepresentations in the policy, or for damages in the execution of the policy. The representations here are no part of the contract, but outside of it, and anterior, or preliminary to the contract, and as such not properly maritime. Marquardt v. French, 53 Fed. Rep. 603; The Eli Whitney, 1 Blatchf. 360; The Eclipse, 135 U. S. 599, 10 Sup. Ct. Rep. 873. As a tort, the case is not one of marine tort, because not arising upon the water, or in course of navigation. The exceptions are, therefore, sustained, and the libel must be dismissed; but, as the court has no jurisdiction, without costs.

HOWLETT v. CENTRAL CAROLINA LAND & IMP. CO. et al.

(Circuit Court, D. South Carolina. May 19, 1893.)

COURTS—STATE AND FEDERAL—CONFLICTING JURISDICTION.

A creditors' bill was filed in the United States circuit court, the ordinary rule to show cause was issued, with a restraining order, and a temporary receiver was appointed. At the return day of the rule defendants showed that a similar proceeding had been theretofore begun in the state court, and jurisdiction duly acquired. *Held* that, as the proceedings had in the federal court were merely preliminary and ex parte, no further action would be taken therein until the course of the state court had been developed.

In Equity. Suit by Alfred A. Howlett against the Central Carolina Land & Improvement Company, Frank Williams, and Sidney Turley.

Knox Livingston, for complainant.

C. S. Nettles, Moise & Lee, and Edward O. Woods, for defendants.

SIMONTON, District Judge. On the 20th of April last the bill, —a creditors' bill—was filed in this court, Knox Livingston, Esq., signing the bill as attorney, praying, among other things, the appointment of a receiver. The ordinary rule to show cause was issued, with restraining order, and a temporary receiver was appointed. The rule was made returnable on 17th May current. The corporation defendant answered on 13th May, 1893, by A. A. Howlett, its president. Subpoenas ad respondendum were issued, but were never served on the other defendants, judgment creditors, of the corporation. On the day fixed for the return to the rule, Williams and Turley, named as defendants in the bill, appeared, and with them counsel for the Simonds National Bank and the Bank of Sumter, who are stated in the bill to be judgment creditors of the defendant corporation, but who were not made parties defendant; and also other counsel representing parties who claim to be creditors. They show cause under the rule as follows: On 30th March, 1893, a summons was duly issued out of the court of common pleas for Sumter county in the state of South Carolina, in the name of the Simonds National Bank and the Bank of Sumter against the Central Land & Improvement Company, whereby an action was commenced against said company in the nature of a creditors' bill for the settlement of its affairs; that said summons was lodged in the office of the sheriff of the said county, and was personally served on A. A. Howlett, its president; that some four days afterwards, Knox Livingston, Esq., appeared for said defendant, and demanded a copy of the complaint; that the complaint was filed, and a copy thereof duly served on him by mail on 22d April, 1893. They contend that by these proceedings the jurisdiction of the state court attached in this case, and they submit that under these circumstances this court will not interfere.

In South Carolina, civil actions are commenced by the service of a summons. Code Civil Proc. § 148. A copy of the complaint need not be served with the summons. Id. § 151. From the time of the