respondent. Northwest Transp. Co. v. Boston Marine Ins. Co., 41 Fed. Rep. 793, 797. The evidence is too meager to warrant a finding of negligence in the carrier. The grounding of such boats in the slips is not uncommon. This shoal was of mud and sand; it was known to the stevedore. No previous accident from grounding in the slip is shown. The kind of damage proved is not such as would naturally arise from grounding on a dangerous bottom, viz.: the twisting, the hogging or the breaking of the boat; but a hole through the bottom, such as would arise from the log with spikes found there the next morning. It was undoubtedly some accidental and recent accretion. There is no evidence of negligence in examining the slip, or that grounding in it was dangerous. No prior knowledge of this log is proved; nor any neglect of reasonable care. Accidents from such causes occasionally happen without negligence imputable to any one. Potter v. Insurance Co., 2 Sumn. 197; Bowring v. Thebaud, 42 Fed. Rep. 796. Upon the meager evidence on this subject, I do not think there is sufficient proof that the moving of the libelant's boat upon the shoal was in itself negligence; and consequently the case does not fall within the provision of the insurance policy above noted. Decree for the libelant for $255.63, with interest from November 1, 1892, and costs.

THE ELECTRON.

ELECTRO-DYNAMIC CO. v. THE ELECTRON.

BIGLER v. ELECTRO-DYNAMIC CO.

(District Court, S. D. New York. April 8, 1893.)

1. MARITIME LIEN—ARTICLES DELIVERED WHEN STATE LAW GIVES LIEN.
   Where articles were delivered for the use of a yacht at Newark, N. J., according to contract, and the law of that state expressly gives a lien for such work and materials, *held*, that a lien against the vessel could be enforced, whether the articles were furnished on the credit of the yacht or not.

2. SALE—WARRANTY—WRITTEN CONTRACT—PAROL EXCLUDED.
   Certain electrical machines were furnished to a yacht with a view to increasing her speed. The contract was in writing, and contained no guaranty that the machines would actually so increase the speed, but only a warranty of increased horse power. The evidence indicating that the guarantied additional horse power was actually developed, and that as to increase of speed the vendor had undertaken nothing, parol evidence as to a guaranty of increase of speed being excluded, and the written contract having been fairly complied with by the vendor, *held*, that the latter was entitled to the balance of the contract price.

   SAME—SALE OF PATENTED ARTICLE—INABILITY OF VENDOR TO GIVE RIGHT TO LEGAL USE.
   In the case of the sale of a patented article the use of which is the substance of the right intended to be given and acquired, the right to use should stand on the same ground as the title. Unless, therefore, facts appear which show that the vendee took the risk of conflicting claims as to the patent right, the vendor is bound either to secure to the vendee the right to use that which was sold for use, or answer in damages for the loss of the value of that use from the time any further use was prevented.

4. SAME—RIGHT TO DAMAGES—EVICTION.
To give any ground for a right to damages by the vendee of a patented article for inability to use it there must have been an eviction of the vendee from the use of the article, or what is equivalent to an eviction.

5. SAME—EVICTION—WHAT IS—INJUNCTION IN PATENT SUIT.
A perpetual injunction, such as is usually given in patent cases by a court of equity, where notice of such adjudication is brought home to a purchaser of the article by the person having the legal right, with an imperative prohibition against any further use, is such an eviction as will entitle the purchaser to damages against the vendor.

6. SAME—DAMAGES—HOW ASCERTAINED.
The evidence leaving it doubtful what would be the damage to the vendee of a patented article by reason of its use having been prohibited by the victorious party in a litigation over the patent in which the vendor of the article was the unsuccessful litigant, *held*, that a suit for damages against the vendor for loss for the use of the article would be suspended for 30 days to allow the vendor to obtain from the legal patentee a license for the vendee to use the patent, failing which it would be referred to a commissioner to ascertain the value of the future use of the patent of which the vendee had been deprived.

In Admiralty. Libel for balance of price of repairs and supplies. Cross libel to recover damages for breach of the contract under which the repairs were made. A stay of proceedings under the original libel until security was given for the damages claimed under the cross libel was heretofore allowed. 48 Fed. Rep. 689.

Robinson, Biddle & Ward, for Electro-Dynamic Co.
Wilcox, Adams & Green, for the Electron.

BROWN, District Judge. The above libel was filed to recover payment of the balance of the contract price for supplying to the yacht Electron certain electrical storage batteries, and other work and material, in the spring of 1891. The answer alleges that the batteries were designed to increase the electrical motor power of the yacht, and to enable her to attain a certain increased speed, and that the libelant represented that this could be obtained by increasing the number of cells and rewinding the motor; and that by such changes she would make from 1,400 to 2,000 revolutions of her wheel per minute on fast speed; and that the agreement for repairs was entered into on the faith of these assurances; but that the work supplied wholly failed to produce the power, the velocity, or the increased speed, the greatest number of possible revolutions being 770; also, that the batteries furnished were an infringement of the Brush Electric Company's patents, which infringement has been adjudicated, and the claimant thereby prevented from the further use of the batteries furnished. A cross libel was filed, stating similar facts, for the purpose of recovering $2,000 which had been paid on account of the work and other damages, tendering back the batteries and other articles delivered. An offer to return the articles was made about two months after the original libel was filed, and a few days before the filing of the answer thereto, and of the cross libel.

The contract between the parties was in writing, through the libelant's letter of February 17, 1891, afterwards amended, in

some respects, by certain corrections suggested by the claimant; and as thus amended definitely accepted by the claimant by letter of February 28th. The libelant did business in Philadelphia, whence the letter of February 17th was written. The claimant's acceptance was written from his residence in Newburgh, N. Y. The essential parts of these letters, as respects the questions at issue, are as follows, namely, the letter of Mr. Griscom, the president of the libelant company, addressed to Mr. Bigler at Newburgh, and dated February 17, 1891:

"Dear Sir: I have just seen Mr. Bates who confirms the rough estimate I made to you the other day in answer to your request for a price on refitting the Electron with two hundred and fifty (250) cells of storage battery and with the original motor rewound so as to produce 15 horse power, or 25 horse power at a spurt, or to produce readily about 10 horse power in ordinary service. We therefore propose to furnish you with two hundred and fifty new cells of 23 M accumulators, rewind one motor, supply two new armatures, supply all necessary switches and wiring and ten incandescent lamps and sockets for the sum of four thousand and ten dollars, payable two thousand dollars cash on delivery of the material at Newark, N. J., ready to go on the boat, and one thousand dollars in a 60 days' note and one thousand and ten dollars in a 90 days' note, interest added, drawn to your order and indorsed by you. * * * Yours, truly, W. W. Griscom, President."

Mr. Bigler replied by letter dated February 21st, as follows:

"Newburgh, Feb. 21, 1891.

"W. W. Griscom, Esq., Prest. 224 Carter St., Phila.—Dear Sir: Your favor of the 20th inst. is at hand and I notice what you say confirming our verbal understanding of the power which you propose for the motor to be used in the electrical boat Electron. This is entirely satisfactory. All the other specifications are as we talked except you had 12 lamps instead of ten, the payments were $2,000 cash on delivery of the boat completely fitted with the electrical works, balance 2 and 3 months as you state, but the price complete you have $4,000 and them $4,010. We won't let the 10 dollars spoil the trade as I am sure you will consider that small amount. You can therefore go on with the work, as I propose to have the boat at the Newark factory about the first of April. Yours, truly, J. Bigler."

The terms of this reply not being wholly satisfactory to Mr. Griscom, the latter, by letter of February 26th, wrote to Mr. Bigler as follows:

"Dear Sir: Your favor of Feb. 21st at hand. I have entered your order for the equipment of the electrical boat Electron and will commence work on the motor promptly. Will you please send a formal acceptance of my letter of Feb. 17th which has been approved by the committee and which I am not authorized to charge in any part? Will you oblige me by performing this formality promptly, in order that we may lose no time?

"W. W. Griscom, President."

In reply to this, Mr. Bigler wrote to Mr. Griscom under date of February 28th as follows:

"Dear Sir: Your favor of the 26th inst. is at hand in which you say 'I have entered your order for the equipment of the electrical boat Electron and will commence work on the motor promptly.' You ask for a formal acceptance of your offer of the 17th of this month. I certainly intended by my letter of the 21st to fully accept your proposition. If you do not consider it so I will repeat I agree to pay you $4,010 for the work complete; $2,000 cash when the boat is equipped complete as per your letter of the 17th inst., $1.000 in my note of 2 months, $1,010 at 3 months, both notes made to my order, and