

is clear, that what a man has he may assign, excepting for wrongs of a personal nature, such as slander and assault. The convincing reason is that given by Judge Ware in the case cited, that "the debtor cannot be injured by the assignment, while the creditor would lose part of the benefit of his security if he cannot assign." In this state (Mississippi) it is settled law that the lien of a mechanic, material man, or laborer may be assigned. In the case of *Kerr v. Moore*, 54 Miss. 288, the court say:

"The decided weight of authority and reasoning, according to our view, is in favor of the assignability of the lien of the mechanic, and the right of the assignee to assert his claim and enforce the lien in the same manner and to the same extent that the mechanic could. We hold that the lien of a laborer for wages is assignable, and that the assignee can enforce it, just as the laborer could. This view better accords with the general policy of our law, and the spirit and purpose of the act which gives the laborer a lien, than the contrary view."

In the last edition of *Jones, Liens*, § 1788, the law is thus stated:

"The assignment of a debt secured by a maritime lien carries with it the lien security, where the parties so intended, and if the assignment be absolute the assignee should proceed in the admiralty in his own name;" citing numerous cases.

Judge Blodgett, in the case of *The American Eagle*, 19 Fed. 879, says:

"There is no doubt some seeming authority in support of the exception, but I think the more reliable and better-considered cases are in favor of supporting the lien in behalf of the assignee, or giving him all the security which the original creditor had."

The debtor cannot, certainly, be injured by an assignment. The creditor might lose, if he cannot assign. As far as I have been able to ascertain, I think it has been accepted doctrine in this district that maritime lien claims were assignable. Let a decree be entered in accord with the views herein expressed.

## THE JOURNEYMAN.

### SHARP v. THE JOURNEYMAN.

(District Court, N. D. New York. March 8, 1894.)

#### SEAMEN—WAGES—LIBEL AGAINST VESSEL—SET-OFF.

Upon proceedings in rem against a barge for wages due a mariner, the claimant cannot set off a debt due by the libellant to a third person, who has assigned such debt to the master personally.

In Admiralty. Libel by John Sharp against the Journeyman for wages. Decree for libellant.

Bovingdon & Brown, for libellant.

Cook & Fitzgerald, for claimant.

COXE, District Judge. John Sharp, the libellant, during the summer of 1893, at Cleveland, Ohio, shipped as mate upon the barge Journeyman and worked in that capacity for 19½ days. He has not been paid, and the question is what shall be his per diem compensa-

tion. No written contract was signed and he seeks to recover the highest wages paid at Cleveland for a similar voyage within the three months prior to his shipping, pursuant to section 4521 of the Revised Statutes of the United States. The libelant insists that the highest price paid during this period was \$1.50 per day, the claimant that it was but \$1 per day. I am inclined to think that the weight of evidence shows that \$40 per month was the highest price paid at Cleveland for similar voyages, in barges of the size and carrying capacity of the Journeyman, during the months of May, June, and July, 1893. This would make the sum due the libelant for wages \$26. He also seeks to recover \$9.62, which he alleges the master agreed to pay for extra labor. This agreement is positively denied by the master. The burden is upon the libelant to satisfy the court by a preponderance of evidence that this inherently improbable agreement was entered into. He has not done so. It is unnecessary, therefore, to decide whether such an agreement could lawfully be entered into between master and mate. 2 Pars. Shipp. & Adm. 42, 43. The libelant also alleges that he paid \$7.35 for the benefit of the barge, and this claim appears to be undisputed. There is therefore due him \$33.35, less \$5 paid him on account, or \$28.35 in all. The evidence regarding the alleged tender need not be considered, for even though the court should find upon this issue with the claimant it would not aid him, for the reason that it is clear that if made at all the tender was inadequate in amount and insufficient in law. *Boulton v. Moore*, 14 Fed. 922; *The Cornelia Amsden*, 5 Ben. 315, Fed. Cas. No. 3,234; *The Sovereign*, Lush. 85.

The claimant seeks to recover \$25 as a counterclaim. It is alleged that Ella Penny, the cook on the barge, lent the libelant that sum and assigned her claim to the master of the barge prior to the filing of the libel. It is thought that this sum cannot be recovered in this action. It is a claim against the libelant held and owned by D. Finlayson personally. This is a proceeding in rem against the barge to recover wages due a mariner. Finlayson cannot set off the libelant's personal debt to him against the debt of the barge to the libelant. I am not familiar with any case where claims so highly favored as mariners' wages have been defeated by such assignments. *Willard v. Dorr*, 3 Mason, 161, 171, Fed. Cas. No. 17,680; *Dexter v. Munroe*, 2 Spr. 39, Fed. Cas. No. 3,863; Pars. Shipp. & Adm. 433. The libelant is entitled to a decree for \$28.35 and costs.

---

#### THE VIOLA.

#### HAWKINS v. THE VIOLA.

(District Court, S. D. New York. March 5, 1894.)

SHIPPING—DAMAGES—ACT FEB. 13, 1893 — VESSELS MUTUALLY AT FAULT—LIABILITY FOR CARGO DAMAGE.

Section 3 of the act of February 13, 1893, was not designed to relieve one vessel, at the expense of the other, in cases of collision by mutual fault. The prior rules of apportionment are to be adhered to