could be saved; if a man worked her right she could get off. Q. My question was why you were not frightened. A. Because there was nothing to be frightened at."

To find on these facts that the captain left intending to abandon the vessel is to convict him of lunacy or barratry.

There is testimony of language used by the master and some acts of his which tend to support the theory of the libelants, but taking into consideration the entire testimony and particularly his action with reference to the tug I am compelled to think that it was his purpose to save the schooner if possible. Assuming him to be a man of ordinary honesty and common sense it is simply incredible that he intended to abandon her because she was in a position of danger. But even upon the assumption that the master abandoned her, either because he was panic-stricken or deliberately and willfully intended to wreck her, his conduct did not absolve the libelants from their duty to the vessel. The services which they rendered were the ordinary services of skillful seamen. The vessel had a right to them by virtue of the existing contract. Rev. St. U. S. § 4525. It would, in my judgment, be a most dangerous precedent to hold that a seaman is entitled to salvage each time he extricates his vessel from an awkward or hazardous situation. That these libelants did anything more than was required of them by the situation I cannot believe. Their wages have been paid in full and they have no claim for anything further. The Neptune, 1 Hagg. Adm. 227, 237; Miller v. Kelly, 1 Abb. Adm. 564, Fed. Cas. No. 9,577; The Dodge Healy, 4 Wash. C. C. 651, Fed. Cas. No. 2,849; The Franklin, Blatchf. & H. 525, 543, Fed. Cas. No. 11,646; The John Perkins, 21 Law. Rep. 87, Fed. Cas. No. 7,360; The Wave, 2 Paine, 131, Fed. Cas. No. 17,300; 2 Pars. Shipp. & Adm. 264; Cohen, Adm. 55, 56.

The libel is dismissed.

THE EXPRESS.

(Circuit Court of Appeals, Second Circuit. February 20, 1893.)

No. 50.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty.

For decision of the district court, see 48 Fed. 323.

Joseph F. Mosher (Carpenter & Mosher, on the brief), for appellant, the New England Terminal Co.

James M. Ward, assistant counsel to the corporation (William H. Clark, counsel to the corporation, on the brief), for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the opinion of the court below in this cause, and affirm the decree, with interest and costs in this court to the appellee.

THE NEBRASKA.

HOFFMAN v. THE NEBRASKA.

(District Court, N. D. Illinois. April 30, 1894.)

1. MARITIME LIENS—REPAIRS AND SUPPLIES—STATE STATUTES.
Where an Illinois vessel is taken to a Wisconsin port to be altered and refitted, there being no necessity for doing the work at that particular port, no maritime lien arises therefor, since such liens are founded on necessity; but the contractor has a lien under the Wisconsin statute, which gives liens to the builders and repairers of water craft.

2. SAME—WAIVER—MORTGAGE.
A lien for repairs created by state law is not lost by taking a note and mortgage on the vessel, where the note expressly states that it is not given or accepted in lieu or as a waiver of the lien.

3. SAME—PRIORITIES.
Liens for repairs and for supplies, one created by the statute of the home port, and the other by that of another state, are entitled to equal rank.

4. SAME—SUPPLIES FURNISHED TO MARSHAL.
A lien for fuel furnished to a steamboat while in the custody of the marshal should be allowed only in case the net earnings of the boat add to the funds in his hands for distribution, and only to the extent of his proportionate share in such distribution.

Libel by Frank Hoffman against the steam propeller Nebraska.

W. H. Condon and George E. Cramer, for libelant.

GROSSCUP, District Judge. The propeller Nebraska has been sold by the action of this court, and the money is now waiting in court for distribution. There is no claim for seamen's wages, unless it be that of the master, and the fund is to be distributed among the different parties who are otherwise entitled to liens thereon. Unfortunately, it is insufficient to pay all the claimants in full; hence the contest respecting the rank and dignity of the claims. The evidence shows that in view of the World's Fair, and the probability of a large passenger traffic between Chicago and Jackson Park, the owner of the steamer, one Cummings, then residing in Chicago, took her to Milwaukee, and put her in the dry docks of the Milwaukee Dry-Dock Company, under a contract with that company to refit her, in such a way as would make her temporarily adapted to the carriage of passengers. The cost of the refitting amounted to upwards of $14,000, which alone shows that it must have been very extensive and thorough. It consisted of the taking out of her old engines, and their replacement, and such readjustment and reconstruction of the decks as would adapt them to passenger traffic. The statutes of Wisconsin, like those of Illinois, provide that the builder or repairer of water craft shall have, under certain conditions, liens for the material furnished and services rendered thereon, and I think the understanding and dealings between the owner and the dry-dock company were such as, against the owner, would give the dry-dock company a lien under that statute. Subsequently, notes for the amount owing to the company were executed by the owner, with a mortgage upon the vessel securing them, which was duly filed in