

commerce and navigation that are under the control of the national government, including contracts for furnishing repairs and supplies for vessels engaged in such commerce and navigation. The doctrine of the supreme court is that, while a boat or vessel is being originally built it is not connected with commerce and navigation in such sense that contracts made for the building the boat, in whole or in part, or for furnishing the labor or materials, can be said to be connected with or have reference to commerce or navigation. Such contracts may be entirely completed, the vessel may be wholly built, and yet may never be used in connection with commerce or navigation. A contract, to be of a maritime nature, must be connected with or in aid of commerce and navigation. Merely because it is connected with a ship does not make it maritime. Hence the supreme court holds that contracts connected with the original building and equipping of a ship or boat cannot be held to be of a maritime nature, because they are not, in any proper sense, connected with commerce and navigation. Under the doctrine and rule thus given by the supreme court, it must be held in this case that the contract under which the libelant performed the labor for which he seeks to recover is not of a maritime nature, because the labor performed was in connection with the original construction of the boat, and the Windom, when the labor was done, had not become engaged in any commerce or navigation; and therefore, if the libelant had a lien under the provisions of the state statute, it was not of such a nature that a court of admiralty could take jurisdiction thereof, but it could only be enforced by a proceeding in the state court. The exceptions to the libel on the ground of lack of jurisdiction in this court must therefore be sustained, and the libel must be dismissed.

To prevent a possible misconception of the effect of this ruling, it may be proper to add that this reasoning does not apply to cases wherein the court of admiralty, having properly taken jurisdiction in rem, is proceeding to condemn and sell a ship or other vessel. In such cases, wherein the jurisdiction has once rightfully attached, the court of admiralty can entertain intervening libels on behalf of all parties who have liens on the vessel, regardless of whether such liens are based upon maritime contracts or not.

Libel dismissed, at cost of libelant.

THE MAJESTIC.

CORRIGAN TRANSIT CO. v. THE MAJESTIC.

(District Court, N. D. Illinois. March 16, 1896.)

MARINE INSURANCE—SUBROGATION—COLLISION—ADMIRALTY.

It is no reason for dismissing a libel for collision that some of the underwriters who underwrote the vessel in fault also underwrote the other vessel, and that the damages to the latter vessel have been paid by the underwriters, since that does not render the proceeding a suit of parties against themselves.

In Admiralty. Libel for collision by the Corrigan Transit Company against the steamer Majestic.

Schuyler & Kremer, for libelant.

Ray & Davidson, for respondent.

GROSSCUP, District Judge. The Australasia, belonging to the libelant, came in collision with the steamer Majestic, in consequence of which they both suffered injuries. The libel charges the Majestic with having been the cause of the collision. Upon this, after default, a decree was taken, finding the Majestic to have been in fault, and for damages. The underwriters of the Australasia and Majestic, respectively, were, with some exceptions, the same parties. My recollection is that three of the parties underwriting the former did not underwrite the latter. It appears that the damages to the Australasia have been already paid by her underwriters. I am not advised, however, whether the damages to the Majestic have yet been paid or not. In either instance, however, my conclusion would have been the same. Some of the underwriters of the Majestic now move that the decree finding her in fault, and assessing the damages, be set aside, and the libel dismissed, and, in support of the motion, contend that the libelant had at the time of the decree no remaining cause of action against the Majestic, for the reason that its damages had been satisfied by the Australasia's underwriters.

It is insisted that, because some of the underwriters of the Australasia were also underwriters of the Majestic, this suit, which is beneficially for the Australasia's underwriters, becomes, in substance, a suit of parties against themselves. I do not assent to this proposition. In the absence of satisfaction of its damages, the right of the libelant to bring this action against the party in fault is, of course, incontrovertible. The receipt of its damages does not affect this right, except to enable the underwriters who have paid them to intervene, for the purpose of having a share in the control of the case and the results of the judgment. The underwriters of the Majestic have not underwritten her liability for a tort. Their contract is to make the Majestic as good as she was before the collision. The lien of the libelant and his interveners may, on proper process, be extended, not only to the remnant of the Majestic, but to the fund that covers her injury. The remnant and such fund together constitute the res against which their right of lien and action may be made to run. What effect an innocent payment to the owners of the Majestic might have upon the liability of her underwriters I am not now determining.

Now, the fact that some of the parties who are entitled to intervene, under the libelant, are at the same time liable to make good to the res, against which the lien of the court runs, what otherwise would be lost, does not prevent this action taking the same course as if the interveners and the parties liable over to the fund were, in their personality, entirely separate. The most equitable course open for me is to give to all parties having contributed to the owners of the Australasia, on account of her damages, leave to intervene under the libel. If any of the underwriters of the Majestic wish to contest the question of her fault

for the collision, or wish to contest the extent of the damages suffered by the Australasia therefrom, and can make a proper showing of the probable existence of either of these defenses, I will open up the decree to the extent of giving them leave to defend upon such terms relating to costs as would be equitable. I will permit the libellant, and the interveners under them also, to make the underwriters of the Majestic parties, for the purpose of ascertaining the respective amount of their liability, if there be any, on account of the injuries to the Majestic, and to require them to pay such amounts into the fund against which the lien runs. In this way, each underwriter can be compelled to pay his equitable portion of the loss on both ships, and will also receive his equitable portion, by subrogation to the rights of the owner of the vessel not in default.

GEORGE W. BUSH & SONS CO. v. FITZPATRICK et al.

(District Court, E. D. Pennsylvania. March 24, 1896.)

1. SHIPPING—PLEDGE OF FREIGHT—AUTHORITY OF MASTER.

The master has no more authority to pledge unearned freight for money borrowed in a foreign port than to pledge the vessel herself, and in either case he has such power only when the necessities of the vessel require it.

2. SAME—BURDEN OF PROOF.

Where a libel, based on a draft, by which the master undertook to pledge unearned freight for money borrowed in a foreign port, alleges the necessity of the vessel as a basis for the loan, and such necessity is denied by the answer, the burden is on libellant to show the necessity.

3. SAME—INDORSEMENT OF DRAFT CHARGED AGAINST FREIGHT.

Where one making a contract of affreightment directly with the owner, who was his neighbor, thereafter took by indorsement a draft for money borrowed in a foreign port by the master on the credit of the unearned freight, *held*, that it was his duty to make inquiry of the owner before parting with his money, and in default thereof he could not recover on the draft, where it appeared that there was no necessity authorizing the master to make the loan.

This was a libel by the George W. Bush & Sons Company against John Fitzpatrick and others, owners of the schooner John F. Davis, to recover money paid out for a draft drawn by the master in a foreign port.

Horace L. Cheyney and John F. Lewis, for libellant.
Henry R. Edmunds, for respondents.

BUTLER, District Judge. This suit must be regarded as for money borrowed by the master of the schooner Davis of Ellis & Hussy, as witnessed by the draft given them, which is as follows:

\$250.

Jacksonville, Fla., Dec. 16, 1892.

At sight pay to the order of Ellis & Hussy two hundred and fifty dollars, value received and charge the same to account of disbursements of schooner John S. Davis, on account of freight.

[Signed]

Thomas F. Barrett,
Master Schr. John F. Davis.