

that in the Eastern district of Pennsylvania rule 53 was not understood to apply to cases where the original libel was in personam, but the circuit court of appeals, in its opinion in the same case, ignored this practice, although it would have been applicable to the case before them. *Refining Co. v. Funch*, 73 Fed. 844. In *Steamship Co. v. Hagar*, 78 Fed. 642, Judge Butler himself says that "the language of the rule applies to all cases of cross libel," and this plain language I do not feel at liberty to disregard. Order to issue staying proceedings in No. 628 until stipulation shall be filed in 712, pursuant to rule 53.

THE MARION S. HARRIS.

SKINNER v. WINSMORE et al.

(Circuit Court of Appeals, Third Circuit. February 16, 1898.)

No. 17.

1. SALE OF A VESSEL—PAYMENT OF PURCHASE MONEY AND DELIVERY.

The sale, by a shipwright, of a vessel being repaired in his yards, is complete on the payment of the purchase money and the delivery of possession as far as it can be done, the vessel remaining in said yards, and the repairs continued in the name of the purchaser; no bill of sale or written instrument being necessary to transfer title to a vessel.

2. MARITIME LIENS—MATERIALS—CONTRACT FOR LIEN.

Where supplies for the equipment of a vessel are sold to the owner, who is known to be financially irresponsible, and are forwarded and delivered to the vessel at a port in another state under an express contract for a lien, the sellers are entitled to a lien.

3. SAME—BUSINESS FOR WHICH VESSEL IS INTENDED—MARITIME LIEN.

A contract for supplies for a completed ship intended to engage in navigation and commerce, though at the time not prepared to enter upon a voyage, and entitled to the rights and privileges of a vessel of the United States, is, in its nature, maritime, where the object and effect is to enable her to pursue her business upon the seas; and for supplies so furnished the seller is entitled to a lien on the vessel.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

Thomas Evans, for appellant.

Curtis Tilton, for appellees.

Before ACHESON and DALLAS, Circuit Judges, and KIRKPATRICK, District Judge.

KIRKPATRICK, District Judge. This matter is brought before the court upon an appeal from a decree of the district court of the United States for the Eastern district of Pennsylvania dismissing the exceptions of the appellant to the report of a commissioner. It appears from the record that the bark *Marion S. Harris* was at one time a Norwegian vessel, known as the *Linda*. In 1893 she was abandoned at sea. In January, 1894, after having been towed into the port of Wilmington, N. C., she was, by authority of the owners and under-

writers, sold at public auction to Samuel W. Skinner, a shipwright of that city. The ship's papers were then returned to Norway, and she was without registry of any kind until after the passage of an act of congress approved January 16, 1895, which authorized and directed the commissioner of navigation to cause the foreign-built vessel Linda of Wilmington, N. C., to be registered as a vessel of the United States, when the deputy collector of customs, at Wilmington, on March 11, 1895, issued a certificate of enrollment reciting that Samuel W. Skinner had sworn that he was the sole owner of the vessel called the Marion S. Harris, formerly known as the Linda, and on the 16th March, 1895, issued a certificate of registry reciting that Philip B. Gardner, of Philadelphia, in the state of Pennsylvania, and William N. Harris, of Wilmington, in the state of North Carolina, were the only owners of the Marion S. Harris of Wilmington. Notwithstanding these recitals, it appears from the record that neither Harris nor Skinner had at this time any real ownership in the vessel Marion S. Harris. Under an agreement entered into between Gardner and Harris dated 30th November, 1894, Gardner was to convey to Harris one thirty-second interest in the vessel in consideration of his services to be rendered in obtaining for her an American registry, but it was expressly stipulated that the interest was to be nominal, that no earnings were to be given to Harris, nor was any liability of ownership to be borne by him. Neither was Skinner at that time the owner of the vessel, because in October, 1894, he had sold her to Gardner, as appears by the entries on his books and the receipts which he gave for the purchase price. So far as was possible, he made delivery of the vessel to Gardner, and Gardner, with Skinner's full knowledge, exercised all the rights of possession and ownership, employing and paying workmen in repairing and refitting the vessel, and purchasing sails and other necessities. True, the bark remained in Skinner's shipyard, where the repairs were being made, but such repairs as were done by Skinner were charged to Gardner, the buyer, as to any other owner; the entries on Skinner's books showing that payments were made by him "by order of Captain Gardner." In our opinion, the sale was complete on the payment of the purchase money and the delivery of possession. "A bill of sale was not necessary to transfer the title of the vessel. After it was sold and delivered, the property was changed, and no written instrument was needed to give effect to the title." The *Amelie*, 6 Wall. 18-30. Gardner, the sole owner of the vessel, was a resident of the city of Philadelphia, in the state of Pennsylvania, which therefore became and was the home port of the vessel. The *E. A. Barnard*, 2 Fed. 712; The *G. F. Brown*, 34 Fed. 399; The *Thomas Fletcher*, 24 Fed. 377. That Gardner was a resident of Philadelphia was well known to the material men, the libelants in this case, as was also the fact of his personal irresponsibility. The supplies which were necessary to the proper equipment of the vessel were purchased by Gardner in Philadelphia, and forwarded and delivered to the vessel at Wilmington, N. C., by the several parties who furnished them. For materials supplied under these circumstances, the material man is entitled to a lien. The *Lulu*, 10 Wall. 192-204. In this case the libelants are protected by

an express agreement on the part of the owner that they should have a lien on the vessel for the supplies sold. In the case of *The Kalorama*, 10 Wall. 213, it is held that the owner can order repairs and supplies on the credit of the vessel; the learned judge who spoke for the court adding that "the case is free from difficulty if the owners are present, and the advances are made at their request, and under an agreement, express or implied, that the same are made on the credit of the vessel." It was insisted that the *Marion S. Harris* was not in any legal sense a ship; that, not being enrolled or possessed of a register, she could not lawfully engage in commerce, and was not, therefore, subject to a maritime lien. It may be true that at the time when the libelants furnished the supplies for which they claim their lien the *Marion S. Harris* was not prepared to enter upon a voyage, and was entitled to the rights and privileges of a vessel of the United States, but she was nevertheless a completed ship, intended to engage in navigation and commerce. It makes no difference whether the ship is unfit for sea, or even on the ways, at the time the contract is made; if the object and effect of it be to enable her to pursue her business upon the sea, it is in its nature maritime. *The Hiram R. Dixon*, 33 Fed. 297. Can it be questioned that the sails of *Mair*, or the ship chandlery supplies of *Winsmore*, or the galley furniture of *Flick* were all contracted for and furnished for the sole purpose of preparing the bark to engage in commerce upon the sea? The vessel was actually chartered when these materials were furnished, and performed the chartered voyage. Without them she would have been unable to do so. That the *Marion S. Harris* was without register, or enrollment, or license, or national character has no materiality. The maritime nature of the contracts will not be changed on that account. *The Progresso*, 46 Fed. 293. The true test whether a vessel is subject to the admiralty lien is the business for which she is adapted or susceptible of being used. *The General Cass*, Fed. Cas. No. 5,307. We concur in the view expressed by the learned judge below, that the claim of *George Harris Son & Co.* cannot properly be distinguished from those of the libelants *Mair*, *Winsmore*, and *Flick*, and that there is nothing in the case developed on the record which would estop them from enforcing the same. The mortgage of the appellant *Skinner* bears date the 12th day of March, 1895. In our opinion, there is a total want of proof sufficient to sustain a lien antecedent to the mortgage, based upon an alleged contract and retention of possession. The decree of the district court will be in all things affirmed.

JENNS v. LANDES et al.

(Circuit Court, D. Washington, N. D. March 2, 1898.)

FEDERAL JURISDICTION—ALIENAGE OF PARTIES.

Under the Canadian statute declaring that a married woman "shall within Canada be deemed to be a subject of the state of which her husband is for the time being a subject," a woman who marries a British subject domiciled in Canada, and lives there with him, becomes an alien, as respects the United States, so as to enable her to sue in a federal court.

This was a suit in equity by Lutie Jenns against Henry Landes, Christian Landes, the First National Bank of Port Townsend, and the Landes Estate Company. The cause was heard upon demurrer to the second amended complaint.

W. F. Hayes and Charles E. Shepard, for complainant.

A. R. Coleman and Richard Saxe Jones, for defendants.

HANFORD, District Judge. In this case demurrers have been sustained to the original and first amended complaints on the ground of failure to show that the complainant, Lutie Jenns, was at the time of the commencement of the suit an alien. 84 Fed. 73. A second amended complaint has been filed, in which, to supply the defect in former pleadings, it is alleged, among other things: That the complainant is 23 years of age. That she was born in the state of Washington, and lived with her father until the year 1896, when she permanently removed from the state of Washington, and forsook and abandoned her allegiance to the United States, and was lawfully married to a subject of the queen of Great Britain and Ireland, domiciled in the city of Victoria, and who was then, and is now, a citizen of the province of British Columbia. That afterwards, with her husband, she removed to the city of Vancouver, B. C., where she has since resided with her husband. That her permanent domicile is in said city. That by section 91 of the act of the imperial parliament of Great Britain and Ireland, known as the "British North America Act of 1867" (30 Vict. c. 3), providing for the union and federation of the states and provinces now composing the dominion of Canada, provision is made for the naturalization of aliens as follows: "It is hereby declared that (notwithstanding anything in this act) the exclusive legislative authority of the parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say, * * * class No. 25 naturalization and aliens." That said act of parliament has ever since remained in full force, and, by virtue of the authority thereby conferred upon the parliament of the dominion of Canada, it was enacted by said parliament in the year 1886, by section 22, c. 113, in volume 2 of the officially published statutes of Canada of 1886, that "a married woman shall within Canada be deemed to be a subject of the state of which her husband is for the time being a subject," which act has, since the date thereof, been, and now is, in force as a part of the law of Canada and of Great Britain; and by virtue of said acts, and by reason of her change of domicile and marriage, complainant claims to be a subject of the queen of Great Britain and Ireland, and a citizen

of the province of British Columbia. The case has been again argued upon a demurrer to this second amended bill.

In accordance with my opinion heretofore given, in this case, I hold the bill of complaint as now amended to be sufficient to show that the complainant has become an alien, and that she is entitled to maintain this suit in this court. The only serious question arising upon the demurrer to the second amended complaint is as to the construction and effect of the Canadian statute of 1886. The words of the act appear to be qualified and limited, and it is contended that it does not confer naturalization upon women married to Canadians, except temporarily, while they remain within Canada. Conceding this point, still the complainant is now, and at the time of commencing this suit was, naturalized in Canada, and permanently domiciled there. If, by removing from Canada, her status as to her citizenship should be changed, still the jurisdiction of this court would not be divested. Where the jurisdiction of a United States circuit court depends upon the citizenship or alienage of the parties, the jurisdictional facts must exist at the time when the jurisdiction is first invoked, and, after jurisdiction has attached, it does not become divested by subsequent changes of residence or alteration of the status of the parties as citizens or aliens. 1 Fost. Fed. Prac. p. 41. Demurrer overruled.

MORRISON v. NORTH AMERICAN TRANSPORTATION & TRADING CO.

(Circuit Court, D. Washington, N. D. February 7, 1898.)

REMOVAL OF CAUSES—JOINDER OF ASSIGNED CAUSES OF ACTION.

A suit was brought in a state court on a cause of action for breach of contract between plaintiff and defendant; also on seven other causes of action for damages for the breaking of other contracts with third parties, which causes of action were assigned to plaintiff. Defendant removed the cause to a federal court. *Held*, that defendant could not thereafter question the jurisdiction of a federal court as to the assigned causes of action, on the ground that it would not have had jurisdiction if no assignment had been made.

This was an action founded on breaches of contract, and was brought by Donald Morrison against the North American Transportation & Trading Company, a corporation of the state of Illinois.

Upton, Arthur & Wheeler, for plaintiff.
Fred Bausman, for defendant.

HANFORD, District Judge. The complaint alleges a cause of action for damages for the breaking of a contract made and entered into by and between the plaintiff and the defendant, also seven other causes of action for damages for the breaking of seven other contracts made and entered into by and between the defendant and other persons, and alleges the assignment of the seven causes of action to the plaintiff. The defendant, after having removed the case to this court from the state court in which it was commenced, questions the right of the plaintiff to prosecute the case in this court as to the seven assigned causes of action, on two grounds, viz. they are not as-