

Mar. Ct.]

IN RE CARGO EX "ERIE STEWART."

[Mar Ct.]

and had then applied to get the appeal bond out for suit, which application had been granted. He contended that the taxation was a nullity until an order had been obtained, and that the bond ought not to have been ordered to be given out until the costs had been regularly taxed.

C. Millar and Morson, who appeared for the defendants, were not called on.

The CHANCELLOR.—We are of opinion that the bond being for the due prosecution of the appeal, the condition of the bond was forfeited the moment the notice of discontinuance was served, and the taxation of costs was merely a question affecting the damages recoverable under it, even if any order were necessary as contended; but we are of opinion that no order was necessary, and that the statute (R. S. O. c. 88, s. 41) gives the respondents the costs.

Motion refused with costs.

IN THE MARITIME COURT OF ONTARIO.

(Reported for the LAW JOURNAL.)

IN RE CARGO EX "ERIE STEWART."

There is no maritime lien for freight.

[Kingston.—Nov. 11.—Price, Sur. J.]

The petition in this case was filed at the City of Kingston, 25th October, 1882. It set out a contract to carry 15,999 bushels of wheat from Port Dover to Kingston for a certain freight, to wit, \$571.14, to be there delivered to the Montreal Transportation Co. It alleged the carriage of the wheat, its delivery to the company, the payment of \$496.67, and that the grain was then *en route* to Montreal on the company's barge *Star*. It claimed a balance of \$74.47 due for freight, and a lien on the grain for that amount. A warrant issued, and the barge and her cargo were arrested at Dickinson's Landing.

The Montreal Transportation Co. intervened, and demurred to the petition.

Whiting, for demurrer:—There is no maritime lien for freight, but only a common law possessory lien: Foard on Shipping, p. 542, note 6 A; MacLachlan, 236, 465; Coote's Admiralty Practice, p. 16; *Mors-le-Blanch v. Wilson*, L. R. 8, P.D. 236. The common law lien is gone here because there has been an unqualified delivery

of the goods: MacLachlan, 236–238. The Maritime Court cannot enforce a common law lien unless it arises incidentally in a suit over which the Court has jurisdiction: Coote, p. 16.

Smythe, contra:—There is a maritime lien for freight: Rules 26 and 74; Abbott on Shipping, p. 237.

PRICE, Surrogate Judge:—The schooner *Erie Stewart*, under bills of lading, carried a cargo of wheat from Port Dover to Kingston, and delivered the cargo to the Montreal Transportation Co.

The cargo, at the time of filing the petition herein, was "on board the barge *Star*, *en route* for Montreal." The petitioner, the owner of the schooner *Erie Stewart*, by his petition, seeks to arrest the barge *Star* and cargo for a balance of freight due him for carrying said grain.

The Montreal Transportation Co. demur in law to the petition on the ground that the action is for freight, and there is no lien on the barge and cargo.

There is a lien for freight at common law, a possessory lien which terminates with the delivery of the goods. Is there such a lien as a Maritime lien, which enables the carrier to follow the goods, such as the petitioner seeks to enforce here.

I can find no authority for holding that the common law right for recovery of freight has been extended by the Admiralty or Vice Admiralty Act. The common law gave to the carrier full, and what was no doubt considered sufficient, remedy. "Before recovering the goods the carrier is entitled to demand reasonable charges for their carriage, and if not paid the carrier may refuse to carry. But where the goods have been carried without freight being paid the carrier has not only his right to retain the goods in his possession until paid, but may resort to an action at law to recover:" Brown on Carriers, 353, etc.

"In order that a ship owner may enforce his lien on the goods it is necessary that they should be legally in his possession, unless it has been reserved by express agreement:" Kay on Shipmasters, p. 328, etc. If the master parts voluntarily with the possession of the goods, he loses his lien on them: Kay 335.

If the master delivers the goods to the consignee, or to any one who represents him, so that they have become at his risk, the lien is