

Fourthly, as to factors :

Factors have a general lien for the balance of the account : *Kruger v. Wilcox*, 1 Amb. 253.

Fifthly, as to common carriers :

A common carrier has a particular or specific lien at common law which empowers him to retain goods carried by him until the price of the carriage of those particular goods has been paid : *Butler v. Woolcott*, 2 N. R. 64.

A claim to a general lien can be supported only by proof of general usage, special agreement, or mode of dealing supporting such claim : *Rushforth v. Hadfield*, 6 East, 519, s. c. 7 East, 224 ; *Wright v. Snell*, 5 B. & Ald. 350.

Sixthly, as to the master of a ship :

The master of a ship has a maritime lien both for his wages and disbursements, and his claim is to be preferred to the claim of a mortgagee : *The Mary Ann*, L. Rep. 1 A. & E. 8, 24 Vict. c. 10, s. 10.

Formerly the master had no lien upon the ship for his wages : *Smith v. Plummer*, 1 B. & Ad., 575. By the 16th section of the 7 & 8 Vict., c. 112, he first acquired the same rights of lien for the recovery of his wages as a seaman, but only in the case of a bankruptcy of the owner, but this restriction was taken off by the 191st section of the Merchant Shipping Act, 1854, which enacts that, "every master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages, which, by this act or by any law or custom, any seaman, not being a master, has for the recovery of his wages." The seaman, however, could not recover wages in the Admiralty Court, if there was a special contract respecting the same ; and as the master's wages are almost invariably determined by special contract, his position was not greatly improved by the Merchant Shipping Act. This difficulty was put an end to by the 10th section of the Admiralty Court Act, 1861, 24 Vict., c. 1, which enacts that "The High Court of Admiralty shall have jurisdiction over any claims by a seaman of any ship, for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any lien by the master of any ship for wages earned by him on board the ship." The claim of a seaman for his wages over-rides that of a mortgagee, hence the claim of the master in respect of his wages is also

preferred to that of a mortgagee : per Dr. Lushington, *The Mary Ann*, *ubi sup.*

The master's maritime lien on the freight for his wages and disbursements, in priority to the claims of the mortgagees, is not affected by the fact of his being also part owner of the vessel : *The Feronia*, L. Rep., 2 A. & E., 65.

A maritime lien does not include or require possession. The word is used in maritime law, not in the strict legal sense in which we understand it in courts of common law, in which case there can be no lien where there is no possession, actual or constructive, but to express, as if by analogy, the nature of claims which neither pre-suppose nor originate in possession. This, it has been said, was well understood in the civil law, by which there might be a pledge with possession, and a hypothec without possession, and by which, in either case, the right travelled with the thing into whatsoever possession it came. Having its origin in this rule of law, a maritime lien is defined by Lord Tenterden to mean a claim or privilege upon a thing to be carried into effect by legal process. That process is explained by Mr. Justice Story (1 Sumner, 78,) to be a proceeding *in rem*. "A maritime lien," in the language of the judicial committee of the Privy Council in *Harmer v. Bell*, 7 Moo. P. C., 284, "is the foundation of the proceeding *in rem*, a process to make perfect a right inchoate from the moment the lien attaches ; and whilst it must be admitted that where such a lien exists, a proceeding *in rem* may be had, it will be found to be equally true that in all cases where a proceeding *in rem* is the proper course, there a maritime lien exists, which gives a privilege or claim upon the thing to be carried into effect by legal process. This claim or privilege travels with the thing into whatsoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it first attached."

Maritime liens are to be distinguished from claims, the payment of which the court has power to enforce from the ship and freight. The former spring into existence the moment the circumstances give birth to them, such as damage, salvage, and wages. But it does not follow that because a claim may, by Act of Par-