

1FED.CAS.—66

Case No. 481.

THE ANTELOPE.

{1 Ben. 521.}¹

District Court, E. D. New York.

Oct., 1867.

ADMIRALTY PRACTICE—BONDING A VESSEL WORTH LESS THAN SEVERAL CLAIMS AGAINST HER—MARRIED WOMEN REJECTED AS SURETIES.

1. Where several libels were filed against a vessel to recover claims, which amounted to more than the appraised value of the vessel, *Held*, that she might be discharged. on the claimants giving a stipulation, in the full value of the vessel, the same to stand in court, for the benefit of all the libellants before the court.
2. That a married woman, though she justified in the required amount, would not be accepted as surety.

In admiralty. The ship *Antelope* was held under process in two cases, and both cases came before the court upon a motion made on behalf of the claimants, for the release of the vessel upon bail. It appeared that, on the 31st day of August, 1867, one George W. Curtis filed his libel against the vessel to enforce a lien, amounting to \$827.22, for supplies furnished the vessel in this port between the 19th day of June and the 30th of August last. The vessel was, at that time, in the custody of the sheriff, under process issuing out of a state court, and the execution of the process of this court was, accordingly, delayed until the custody of the sheriff terminated by a sale and delivery to the persons now before the court as claimants, when the vessel was duly seized by the marshal, under the process issued in the action of Curtis, and also under process issued in a subsequent action instituted against the same vessel by the libellant, Franklin F. Randolph, to recover the sum of \$23,000, claimed to be due by reason of a breach of a charter party, which occurred in this port at about the same time. The total value of the vessel, as ascertained by an appraisement, to which no objection was taken, was \$18,000, a sum insufficient to discharge in full the claims made against her in the two actions above mentioned. The claimants, having perfected their appearance, now moved for the release of the vessel, upon the filing of a stipulation in the full value of the vessel, the same to stand in court in place of the vessel for the benefit of all the libellants before the court, and conditioned to abide by and perform the decrees of the court in such actions, and pay the sums awarded therein, not exceeding in all the appraised value of the vessel.

Beebe, Dean & Donohue, for Curtis.

Scudder & Carter, for Randolph.

Emerson & Goodrich, for claimants.

BENEDICT, District Judge. Inasmuch as the value of this vessel is conceded to be less than the amount claimed in these actions, it is manifest that the claimant will, by

The ANTELOPE.

stipulating to pay the decree in each case to the extent of the value of the vessel, render himself liable to pay into court, upon his stipulations in the two cases, more than the value of the property which he will receive upon the release. Unless, then, some form of stipulation can be taken which will render the claimant liable for no more than the value of the property which he receives from the marshal, the vessel must remain in custody. According to the view taken by the libellants, the necessary effect of admiralty proceedings against a vessel, under circumstances like the present, is to compel the shipowner either to permit his vessel to be taken from him and sold before any liability on her part has been ascertained, or to allow her to remain tied to the wharf in custody of the marshal until the final termination of the litigation in this or the appellate court, or to pay a demand which he disputes. But the flexible proceedings of the admiralty cannot be supposed to be inadequate to such a state of facts, and the court powerless to prevent such an effect of its process. To relieve a ship owner from such a dilemma, by a stipulation in the form here proposed, is as clearly within the general powers of a court of admiralty as the power to release upon a stipulation in the ordinary form. It is a power necessary to the proper exercise of the extraordinary jurisdiction over a ship and her owners, which belongs to this court, and the same reason which impels the court to take the ordinary stipulation is applicable in favor of the stipulation in the form proposed. A court of admiralty will always release a ship, and enable her to proceed to earn freight, when the rights of parties having claims upon her can be properly protected by a stipulation taken in place of the vessel. The stipulation here offered will fully secure to the libellants all the rights which they now have. Their proceedings look to a sale of the vessel, in satisfaction of the claims set forth. If the vessel were to be sold upon final decrees, or as perishable, only her value would be paid into the registry, no matter how many claims were outstanding against her, and the lien of each libellant would be then transferred to the fund in court, leaving the vessel free from all liens. Under the stipulation proposed, the same sum will be paid in, and with this difference in favor of the libellants, that, by the terms of the stipulation offered, the amount so paid in will be applicable to the payment of the claims of the present libellants before the court; whereas,

in case of a sale, the proceeds might be subjected to subsequent and additional claims. While the stipulation proposed will thus secure to the libellants the payment of their demands, it will cause no inconvenience in the prosecution of the suits. The proceeding is, in effect, a consolidation of the two causes for the purpose of bonding, to avoid the loss and expense which must otherwise be sustained; and the causes could properly be formally consolidated for this purpose, and might well remain consolidated, if either libellant desires to contest the validity or amount of the demand made by the other, to be dissevered whenever it shall be needful for the sake of convenience or in furtherance of justice. *The Wm. Hutt*, 1 Lush. 25. In all cases of many libels against a vessel, where the proceeds in court are insufficient to pay all, the causes are, in effect, consolidated: that is, no one is heard without notice to all, and the rights and priorities of all are disposed of at one and the same time, each libel being generally considered as an answer to all other libels, when the question is simply one of priority. *The Magoun*, [Case No. 5,163.] It is not seen why the same practice cannot as well be pursued where, instead of proceeds, there is a stipulation for the benefit of all. See *The Rodney*, [Id. 11,993.] As to the objection founded upon the eleventh rule of the supreme court, it seems sufficient to say that that rule is not intended to apply to a case of several libels against a vessel which is insufficient to pay all; and no rule of the supreme court applying to the case, it must be governed by "the principles, rules and usages which belong to courts of admiralty, as contradistinguished from courts of common law." *The Delaware*, [Case No. 3,762.] Moreover if the eleventh rule were to be deemed applicable to a case like this, the power which the rule confers upon the court to fix the amount of the stipulation, without regard to the value of the vessel, would include the power to limit the liability of the stipulation as proposed here. The motion of the claimants will, therefore, be granted, and the vessel will be released upon the claimants filing a stipulation to the effect above indicated. The form of the stipulation may be settled before the court, if necessary, and it must contain a provision for interest. In this court, all persons desiring to recover property upon stipulations are required to include in their stipulations a provision for interest on the value of the property. from the time of its receipt.

The claimants presented, as surety on the bond directed to be given as above, a married woman, who justified in the required amount. The libellants objected to taking a bond thus executed, and, on referring the matter to the judge, the surety was rejected, and the claimants were ordered to furnish other surety.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]