

Case No. 519.

[7 Ben. 483.]¹

THE A. R. GRAY.

District Court, E. D. New York.

Oct., 1874.

RELEASE OF VESSEL FROM CUSTODY—PRIORITY OF CLAIM.

Where a vessel was libelled, and seized under the process, then released by the marshal from custody, upon consent of the libellant, and was subsequently libelled by other parties, condemned and sold: *Held*, that the first libellant had no claim that the consent to release the vessel operated as a waiver of priority of claim.

In admiralty.

Geo. W. Rathburn, for Nathan.

Beebe, Wilcox & Hobbs, for Burtis.

BENEDICT, District Judge. These cases came before the court for a determination of the question of priority between the claims. set forth in the libel of A. F. Nathan and: others, and the claim set forth in the libel of Divine Burtis and others.

The first mentioned libel was filed on the ninth day of May, 1874, when process was issued, and the vessel was taken into custody. Subsequently by the consent of the libellants, the vessel was released by the marshal, and went about her business, in pursuance of an agreement made between the libellants and the owners of the vessel by which the earnings of the boat should be applied to the payment of the libellants' demand. On the 22d day of July, 1874, the vessel was again libelled by the libellant Burtis, and also by other libellants, to recover

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for supplies, some of which had been furnished since the marshal's release of the vessel from his custody, under the process issued in the case of Nathan & Co. Upon these subsequent processes, the vessel was seized, and she had been condemned and sold under decrees entered in some of them.

Her proceeds being thus in court, the libellants Nathan & Co., now insist that they are entitled to be first paid, because their libel was the first in time; and they say, that as the marshal released the vessel from custody under the process, upon their consent simply, without an order of the court, they have lost no rights by such release. I am of the contrary opinion. It does not lie in the mouth of those who consented that the marshal release the vessel from custody, partly at least for their own benefit, now to say that the release was unauthorized. The fact is patent that the vessel was released and resumed her occupation and incurred additional liabilities, not only with the knowledge of but in pursuance of an agreement with the libellants Nathan et al. Such a release amounted to a waiver of any right of priority which might otherwise have been acquired by the filing of their libel prior to the filing of the libel of Burtis. In distributing the proceeds therefore, the order will be that the claim of Burtis be first satisfied.

A. R. GRAY, The. See Case No. 10,949.

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