

Case No. 3,763a. DELAWARE & H. CANAL CO. V. THE ALIDA.  
[23 Betts' D. C. MSS. 139.]

District Court, S. D. New York.

Feb. Term, 1857.

MARITIME LIENS—WHES ATTACHING—SUPPLIES.

[A lien on a steamer for fuel arises upon the delivery thereof on a wharf near by in pursuance of the orders of her officers.]

{Libel by the Delaware & Hudson Canal Company against the steamboat Alida for fuel furnished. Decree for libelants. Judgment suspended to enable claimant to move for a reargument.}

Before BETTS, District Judge.

A delivery of the coal on the wharf alongside or near the vessel by order of her officers was tantamount to a delivery on board. It is not denied that a steamship is responsible in rem for fuel supplied her for the purpose of navigation, but it cannot be claimed that the lien goes beyond that and embraces charges for storage of the coal after a legal delivery to the ship. To constitute an effective delivery so as to create the lien it is not necessary the coal shall be ultimately consumed on board, nor in fact be placed within or upon the vessel. It is sufficient if the whole lot was purchased by the vessel and put in her possession to be used as she required it in her navigation. An anchor, spars, rigging or sails supplied for the equipment of a vessel and delivered within her reach and control acquires a privilege against her body equally as if placed upon her deck. The contract of sale is no longer executory; it is entirely completed on the part of the vendor, whether the vessel accepts the property and delays placing it on board or relands it and departs without it. The law indicates no different rule in respect to the lien, whether the supply after it has gone to and been received by the ship as part of her furnishment, remains permanently with her or is put on shore again, or even not hoisted into the vessel. (Cases in rough notes.) Decree for libellants, with order of reference to ascertain the quantity of coal delivered, &c.

NOTE [by the court]. After the above judgment was rendered, a decision made by the supreme court of the United States in December term last was produced and shown me, in which it seems that court has held that a similar sale and delivery of fuel to a domestic vessel does not create a lien upon her. *Vander water v. Mills* [19 How. (60 U. S.) 82]. I shall order suspension of this judgment to enable the claimant to move for a reargument in the cause.