

Case No. 4,472.  
[1 Ben. 19.]<sup>1</sup>

THE EMPIRE.

District Court, E. D. New York.

Jan., 1866.

MOTION TO REMAND VESSEL INTO CUSTODY AND CANCEL STIPULATION.

1. Where a vessel and cargo were libelled for salvage, and bonded in their full value, and thereafter the owners of the cargo filed a libel against the vessel, claiming to recover the damages occasioned to the cargo by the disaster out of which the salvage claim arose, to an amount equalling the value of the vessel, and thereupon, before this process was returned, the stipulators for value in the salvage case applied to have their stipulations cancelled, and the vessel remanded to custody, under the process in the salvage case: *Held*, that the application was premature, and could not be entertained before the process was returned, and notice published as required by the rules, because till then all parties were not before the court.

{Cited in *The Hope*, 4 Fed. 96.}

2. Whether relief could be given in such a case,—*quere*.

{3. Cited, with other cases, in *United States v. Mackoy*, Case No. 15,696, as to the effect of the release of property on bond.}

On June 23d, 1865, a libel was filed against the ship *Empire* and her cargo by Nathan E. Edmonds and others, representing the steamer *Andrew Fletcher*, to recover salvage for having pulled the ship off from the shoals near Cape Hatteras. On the same day another libel was filed by Samuel Greenwood, who was on board the steamer, on behalf of all persons interested, for the same cause of action. The two actions were consolidated by order of the court *Moses Taylor & Co.* appeared as claimants of the vessel, and *John F. Schepeler* appeared as claimant of the cargo, and they gave stipulations respectively for the value of the vessel and the cargo, whereupon both vessel and cargo were discharged from custody. On Nov. 22d, *Schepeler*, the owner of the cargo, filed a libel against the ship, alleging that the vessel was got on shore by the wrongful negligence of the master of the ship, and that the vessel was liable for the damages occasioned to the cargo thereby to an amount exceeding the value of the vessel. The vessel was again seized under process issued in this action, and while she was in custody, yet another libel was filed against her by *Prince S. Borden*, on behalf of all persons interested in the steamer *Arkansas*, claiming to have been also active in rendering salvage services to the *Empire* on the same occasion. Process was also issued against the vessel in this action. Before the notices required under these processes had been returned as duly published, the agent of the owner of the ship who had given the stipulation for her value in the first cases, applied to the court on notice to all the libellants, on a petition setting forth that the owner was a non-resident, and that he had given the stipulation in question for the owner's account, with no security except the vessel herself, and that that security was endangered by the filing of the latter libels, and praying that the marshal might be directed to hold the vessel under the

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processes issued in the first salvage action, as well as under the latter processes, and that the stipulation which he had given for the value of the vessel might be cancelled. The motion came on to be heard on Jan. 5, 1866. The cases of

Henderson v. The Union [Case No. 14,346], and Gardiner v. The White Squall [Id. 5,239], decided by Judge Nelson in the circuit court, were referred to on the argument.

Miller, Peet & Nichols, for the motion.

Mr. Whiting and Mr. Choate, in opposition.

BENEDICT, District Judge. The present motion, if it can be entertained at any time, is at this time premature, inasmuch as the processes issued upon the latter libels have not been returned. When they have been returned, and notice shall have been published in the usual way, the motion may be renewed, but in the present position of the actions, it must be denied.

I think it proper to add for the information of counsel, that in addition to the cases cited, there exists a case bearing upon the question involved, which was decided by Judge Betts. I allude to the case of *The Jewess* [Case No. 8,412].

[NOTE. The case of *The Jewess*, Case No. 8,412, was published as a note to this case in 1 Ben. 19.]

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]