

Case No. 4,483. ENEAS V. THE CHARLOTTE MINERVA.  
[39 Hunt, Mer. Mag. 73.]

District Court, S. D. New York.

April, 1858.

BOTTOMRY BOND—VALIDITY—LACHES—INTERVENTION BY SHERIFF.

- [1. A sheriff who, after attaching a vessel in a suit by a creditor against her owner, permits, without opposition, her seizure by the marshal under admiralty process, is a competent party to intervene in the admiralty suit, and claim the proceeds in the registry.]
- [2. A bond which hypothecates the vessel for a particular voyage, and a specific period beyond its termination, is good as a bottomry bond, the money loaned having been put at risk under the contract.]
- [3. A bottomry loan need not be for the necessities of the vessel, or cargo, or voyage. When the bond is made by the owner, he may employ the money at his discretion, the lender retaining his lien so long as the ship bears the risk.]
- [4. A delay of a few weeks after the right to enforce a bottomry bond has accrued does not impair the remedy, or enable a junior creditor to take precedence by reason of a prior attachment.]

This was a libel filed to recover the amount of a bottomry bond, executed on June 27, 1856, by the master and owner of the British schooner Charlotte Minerva, to secure a loan of \$4,000 made to him by the libelant [Joseph Eneas], by which that sum was to remain as a lien and bottomry upon the vessel, at the premium of five per cent., and lawful interest for the voyage. The condition of the bond was, that the loan and the premium should be paid at or before the expiration of 350 days after the arrival of the vessel at Harbor Island, Bahamas. She arrived there on July 12, 1856, after which she made two other voyages to New York, and one to Philadelphia. The last one to New York was about the middle of August, 1857. On the 8th of September she was seized by the sheriff of New York, under an attachment against her owner. On September 16th the libel in this case was filed, and the marshal seized the vessel under the process, without opposition on the part of the sheriff, and the vessel was sold by order of this court, its proceeds being less than the amount of the bottomry debt. Judgment was obtained in the action in the state court, and execution issued. The sheriff intervened in this action, claiming that the proceeds of the vessel are Bound by the judgment and execution of the state court, and should be applied first to satisfy it.

Benedict, Burr & Benedict, for libelant.

Larocque & Barlow, for sheriff.

HELD BY THE COURT: That the sheriff is a competent party to intervene in this action, upon his official interest and possession in respect to the vessel, and claim the proceeds in the registry of the court. The Panama [Case No. 10,703]. That the bond, though anomalous and singular in its provisions, yet in substance constitutes a maritime hypothecation of the vessel for a particular voyage and a specific period beyond its termi-

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nation, and the money so loaned has been put in risk under the contract. That this lien is paramount to and supersedes the attachment of the sheriff. That the remedy in this court might be lost for want of definiteness and certainty in the bond, or by laches of the bottomry creditor. That a bottomry loan is equally valid when made on the lapse of a definite period of time, as if on the expiration of a specific voyage. That the loan need not be for the necessities of the vessel, or cargo, or voyage. When the bond is made by the owner, he may employ the money at his discretion, and pledge the ship for its security, the lender retaining his lien so long as the ship bears the risk. That there was no laches in the delay of a few weeks after the libellant's right of action was matured, which can impair his remedy. Nor does the prior attachment of a junior lien creditor supersede his right. Decree for libellant for \$4,000, with the marine interest thereon to August 15th, and interest at 7 per cent. from that date, and costs.