

THE FAVORITE.

Case No. 4,698.

[2 Flip. 86;¹ 25 Int. Rev. Rec. 202.]

District Court, E. D. Michigan.

Oct. 15, 1877.

PRACTICE IN ADMIRALTY—ACCEPTANCE OF STIPULATION BY MISTAKE—RE-ARREST OF VESSEL.

The court has power to order the re-arrest of a vessel if the stipulation to answer a judgment has been accepted by mistake or fraud and the sureties were never bound.

[Cited in *The Haytian Republic*, 154 U. S. 126, 14 Sup. Ct. 994.]

Motion for re-arrest of vessel, on the ground that she had been improvidently discharged from custody. It appeared that a stipulation had been accepted—the only surety upon which was a married woman who had no interest in the vessel.

F. H. Canfield, for libellant.

H. C. Wisner, for respondent.

BROWN, District Judge. That the surety in this case, being a married woman and having no interest in the vessel, is not bound by her stipulation, is too clear for argument, and in fact is conceded by counsel. *De Vries v. Conklin*, 22 Mich. 255; *West v. Lara-way*, 28 Mich. 468.

It is claimed, however, that the vessel having once been released from custody is forever discharged of the lien, and the court has no power to order her re-arrest *The Union* [Case No. 14,346]; *The White Squall* [Id. 17,570]; *The Kalamazoo*, 9 Eng. Law & Eq. 587; *The Old Concord* [Case No. 10,482]. In none of these cases, however, was there any mistake or fraud at the time the stipulation was signed. In *The Union* and *The Kalamazoo* the amount of damages claimed in the libel was increased. In *The White Squall* the vessel was returned to custody by the consent of the parties, against the protest of a person having an interest in the vessel; and in *The Old Concord* the sureties had become insolvent. Conceding that the court has no power to order the re-arrest of a vessel once fairly discharged upon a binding stipulation or for any cause not existing at the time the stipulation was accepted, I am clearly of the opinion that this power exists, whenever through mistake or fraud a stipulation has been accepted which was not binding upon the parties signing it.

An order will be made for the re-arrest of the vessel.

¹ [Reported by William Searcy Flippin, Esq., and here reprinted by permission.]