GALLATIN ET AL. V. THE PILOT.

Case No. 5,199.

{2 Wall. Jr. 592; 2 Am. Law Keg. 697.}[1]

Circuit Court, W. D. Pennsylvania. Nov. Term, 1853.[2]

LIEN OF PART-OWNERS FOR SEAMEN'S WAGES—EFFECT OF SHERIFF'S SALE ON IT.

1. The lien for wages of a seaman, who is himself a part-owner of the vessel on which he serves, is discharged by a sheriff's sale of her, on execution against her owners. And this, although as a general principle, a sheriff's sale of a vessel does not discharge the sailor's lien upon her.
2. The decision of the case by the district court, reported as Poster v. The Pilot {Case No. 4,980}, deciding otherwise, is not law, and is here overruled.

[Appeal from the district court of the United States for the Western district of Pennsylvania.]

The steamer Pilot, navigating the western rivers, was the property of Gallatin, Wood, and several other persons. The boat was navigated for joint profit; Gallatin acting as first mate, and Wood as second mate—it being quite a common custom on the western rivers, for part-owners to assist in navigating their own vessels. As part-owners and quasi partners in the transactions of the boat, they became indebted to several persons, who recovered judgment at common law, in the state courts, against them; and on one of these, the vessel was sold at sheriff's sale as their joint property. While the vessel was under execution, Gallatin and Wood, who are the plaintiffs in this suit, libelled her in the admiralty for wages, as part of the crew; they having, as already stated, acted as her mates. And the case coming on, after the sheriff's sale, to be heard, the purchaser at that sale intervened, and, conceding the existence of the services, denied the right of the libellants thus to recover on their lien; which right was the question now before this court Notice had been given by the libellants, at the sheriff's sale, of their claim to have a lien. No exhibition was made here of the state of accounts as between the owners of the Pilot.

Messrs. Shaler, Stanton, and Hamilton, for the purchaser, admitting fully the law as stated in Taylor v. The Royal Saxon [Case No. 13,803], that as a general principle, the lien of sailors' wages is not discharged by a sheriff's sale, submitted,

I. That part-owners have no lien for wages, as mariners; or, at most that it could exist only inter sese, and could not be exerted adversely to creditors or third parties.

II. That by the sheriff's sale, all the interest of Gallatin and Wood, the libellants," whether as owners or by special lien for wages, had passed to the purchaser at sheriff's sale, and that against him the court would not set up a claim for wages.

Mr. Penny, contra. The navigation of the western rivers by steamboats, being attended with unusual risk, it is usual for capitalists building or owning boats to unite with them as part-owners, one or more persons known to be skilful and trustworthy mariners, whose interest in the vessel, though generally small, is sufficient to ensure a vigilance, which could not be expected of mariners bound to duty only by the prospect of ordinary wages. It is an excellent public policy, calculated to elevate the character of mariners, both in its requirements and its effect. And it does no harm to creditors, since it adds nothing to the wages which must be necessarily incurred in the voyage, the practice, therefore, deserves encouragement from the court. And why shall it not be encouraged? Is a seaman less a seaman, if he works the vessel, because he has some property; or because that property is an interest in the boat he navigates? Why is his lien as against other-persons, less sacred than the lien of his fellow sailor, who has no such interest? Third persons know, as of course, that the vessel is bound for till Seamen's wages. Why introduce an exceptional ease? no policy of law, no motive of natural justice calling for it. The owners had liens

inter sese. Doddington v. Hallet, 1 Ves. Sr. 497, decided by Lord Hardwicke, settled that. The chancellor there gave one party, who had paid the debts of the boat, a-lien against the share of his deceased associate owner. The consequence of doing otherwise, he said, would be, that while one partner had paid" all the creditors of the boat other creditors of the other partner, "would run away with what the plaintiff laid out and expended, which the court would avoid and prevent" Independently, therefore, of a maritime lien for Seamen's wages, Gallatin and Wood had liens on the vessel, as respected-the other owners, for money due them in account for services. A sale of any kind for value, without notice, we may concede, would discharge such a lien; but here there-was an express notice of a claim of lien: and the claimants still have their equity to be paid. In a recent Ohio case (McDonald v. Black, 20 Ohio, 198), the supreme court of that state were inclined to say, that the better opinion, as well as the weight of authority, was in favour of the lien. It is not true, that the libellants, Gallatin and Wood, were liable-for all the debts incurred by the other owners of the ship. Persons navigating a ship, are-tenants in common, and not joint-tenants or partners. This is the law as laid down by Chancellor Kent, in the leading case of Nicoll v. Mumford, 4 Johns. Ch. 522.

Reply. I. As to the lien inter sese. Doddington v. Hallet decided by Lord Hardwicke, was overruled, after much consideration, in Ex parte Young, 2 Ves. & B. 242, and Ex parte Harrison, 2 Rose, 76(and see Ex parte Gibson, 1 Mont. Partn. 102, note, and Ex parte Parry, 5 Ves. 575), by Lord. Eldon; who decided that part-owners of a ship are tenants in common, not joint-tenants; and therefore that no lien on the share of one, a bankrupt, who had been managing-owner, freight, &c, was due to the others:: and Chancellor Kent, in Nicoll v. Mumford, reviewing the law on this point, present?: Lord Bldon's as the true view. Not being partners, therefore, there could be no lien inter sese. And if there was such a lien in law, it don't appear by any facts shown in this case, that on a settlement of joint account, the balance would have been in favor of the libellants. Whether or not certainly a sheriff's sale on execution against all the owners, must discharge any lien one has-against the other.

II. As to the absence of liability in solido. This position is fatal to the former

one of lien inter sese, which could arise only among partners. The doctrine of Ex parte Young and of Nicoll v. Mumford, decided by Lord Eldon and Chancellor Kent, and which establish tenancy in common, as distinct from joint-tenancy or partnership, overrules Doddington v. Hallet, which established lien inter sese only as a consequence of previously establishing that the owners are partners. The two positions assumed on the other side, cannot therefore co-exist

III. But whatever may be the relation of the owners of vessels, strictly speaking, this boat was navigated for joint interest, and the debts arose from the transactions of the boat in these voyages. Certainly as to her voyages, the owners were partners, whatever they might have been as to the boat herself. In fact none of the points considered in the three cases cited, properly arise here; for the vessel was sold on an execution against all parties. The bare question is, whether the owners of a vessel can take her away from their own creditors? Whether, by mortgaging her to themselves, they can defeat the claims of those who are entitled to all their property?

GRIER, Circuit Justice. How far one owner might claim a lien against the share of another, for advances made, labour done, or any balance of account as between themselves, when the other partner sells his share, or becomes bankrupt; or whether, in such a case, this court will adopt the doctrine of Lord Hardwicke, Doddington v. Hallet, 1 Ves. Sr. 497, who decided that he has, or the doctrine of Lord Eldon, Ex parte Young, 2 Ves. & B. 242, who overruled Lord Hardwicke, and decided he has not, are questions not arising before me; for the accounts of the partnership, or how the balance stood among the partners, makes no part of the case.

A sale by the sheriff confers all the title which the defendants in the execution have, and is equivalent to their own deed with special warranty. The case then, presents this bare proposition—can a vendor for a consideration paid, retain a lien against property which he has thus sold and delivered, in the hands of his vendee: and that, too, for a debt due by himself to himself? Certainly he cannot; for where a chattel is sold and delivered to the vendee, the vendor has neither jus in re, nor ad rem; neither "property in nor lien on the thing sold. Admitting that there was, as between the partners, a balance in favor of the libellants, and that it would have been a lien inter sese, how could" we maintain such a lien on a boat sold by themselves with special warranty? A tailor who makes a coat for customers who furnish the cloth, has a lien upon the coat while in his possession, for the price of his labour: but assuming the lien to continue even after a change of possession, it would be an absurd application of the doctrine, to say, that where A. & B. are in partnership, and A. furnishes the cloth and B. makes the coat, and both join in a sale of the coat, that B. has a lien for his labour as a mechanic, on the joint property sold.

The assumption that part-owners, when navigating a boat for their joint interests, are not liable personally, or in solido, for repairs, wages, provisions, &c, furnished to the ves-

sel while trading, or earning freight for their joint profit, is entirely without foundation in law. Eland. Shipp. § 381. The dictum of Chancellor Kent to the contrary, if he ever made one to the contrary, in Nicoll v. Mumford, 4 Johns. Ch. 522, has been overruled by the chancellor himself. The libellants, we think, therefore, cannot, to suit their purposes, shift their characters as mariners and owners, so as to retain a claim on their own vessel for their own wages, after they have sold it for value; or, what is the same thing, the sheriff has sold it for them. They cannot sell their joint property, and charge the purchaser with a balance of accounts between themselves as co-tenants or co-partners. Decree reversed, and now made in favor of defendants, with costs.

GALLATIN, The ALBERT. See Case No. 140.

[1] {Reported by John William Wallace, Esq.; 2 Am. Law Reg. 697, contains only a partial report.}

[2] {Reversing Case No. 4,980.}