THE HOME.

Case No. 6,657.
[18 N. B. R. 557.][1]

District Court, E. D. Michigan. April 1, 1878.

MARITIME LIEN—BANKRUPTCY OF CHARTERER—MATERIAL MEN.

1. A charterer of a vessel, having purchased supplies of a material man upon the credit of the vessel, afterward went into bankruptcy and proposed a composition with his creditors, which was accepted. *Held,* that the lien of the material man was not thereby discharged, even though he voted in favor of accepting the composition.
2. Money furnished to a vessel is not a lien, unless it be furnished for the purpose of paying claims which would themselves be liens.

On libel in admiralty for supplies.

During the year 1875 libellant, who was a shipchandler at Port Huron, claimed to have furnished the tug "Home" supplies and money to the amount of five hundred and seventy-eight dollars and eighteen cents, upon the order of Dale & Moore, the charterers of the tug; that the articles were furnished, with the exception of four items, hereafter mentioned. That they were necessary, and were furnished upon the credit of the tug, is admitted. It was insisted, however, in defence, that, shortly after the supplies were furnished, Dale & Moore were adjudicated bankrupts in the district court for the Northern district of Illinois; that a composition with their creditors was proposed by them, and received the assent of the requisite number and amount; that the resolution of composition was signed by the libellant; that the composition was subsequently carried out, and that it operated as a discharge of the libellant's claim. It seems that libellant had claims against Dale & Moore to the amount of over five thousand dollars, but that for the bill, which is the basis of this suit, libellant, in his proof of debt, claimed expressly a lien upon the tug, and did not waive the same in fact, whatever might be considered the legal effect of his joining in the composition. The case was defended by a mortgagee of the tug, holding under the legal owners.

Atkinson & Atkinson, for libellant.

D. C. Holbrook, for claimant.

BROWN, District Judge. Under general admiralty rule 12, a person furnishing supplies to a vessel has a triple security for the payment of his claim: (1) The owner, a charterer being regarded as the owner pro hac vice; (2) the master; (3) the vessel itself. A failure to collect from either does not impair his remedy against the others. He may pursue them successively until his entire debt is paid. The Paul Boggs [Case No. 10,846]; The Highlander [Id. 6,476]; The Hariett [Id. 6,098]; Granger v. Wayne Circuit Judge, 27 Mich. 406; The Kalorama, 10 Wall. [77 U. S.] 204; Harmer v. Bell, 22 Eng. Law & Eq. 62; Toby v. Brown, 11 Ark. 308; The Bengal, Swabey, 468; The John & Mary, Id. 471;

Nelson v. Couch, 15 C. B. (N. S.) 99. Had the supplies in this case been furnished upon the order of the owners, there would be reason for insisting that the claim against the owner and the lien upon his property was but a single debt, of which the lien was but an incident, and that the release of one might operate as the discharge

of the other; but there are in fact three independent though not joint debtors in this case, viz.: The charterer, the vessel, and the master, and the release of one does not impair the remedy against the others. The case does not differ from that of a debt against the maker of a note, secured by an indorsement, in which case it is now settled that the act of a creditor consenting to a composition does not discharge the surety. If a principal debtor becomes insolvent or procures a discharge in bankruptcy, clearly a surety is not released; so if the principal is discharged by his creditors, the effect upon the surety is the same, and the fact that the plaintiff assented to the composition is declared immaterial. Guild v. Butler, 122 Mass. 498; Browne v. Carr, 2 Russ. 600, 5 Moore & P. 497; Megrath v. Gray, L. R. 9 C. P. 216; Ellis v. Wilmot, L. R. 10 Exch. 10; Ex parte Jacobs, 10 Ch. App. 211. It is true that section 17 of the act of June 22, 1874 [18 Stat. 182], authorizing compositions, provides that creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution, without first relinquishing such security for the benefit of the estate; but the word "secured" here is confined to securities which, if released, would revert to the assignee. It does not apply to personal security, or security upon property which does not belong to the bankrupts. In re Spades [Case No. 13,196]. Even if the creditor be secured by a lien upon the property of the bankrupt, he may either release such lien and unite in the composition for his whole debt, or have his security valued and come in for the difference. In re Lytle [Id. 8,650]; Paret v. Ticknor [Id. 10,711]. If there were any doubt in this case with regard to the intention of the creditor in proving his debt, it is dispelled by the language of his deposition, disclaiming any intention of waiving his lien. I think the composition here must be held only to discharge the debt of the libellant against the charterers, and to have no effect upon his security. But the two items of forty-two dollars and eighty-one cents to J. R. Butler, and of thirty-seven dollars and fifty-five cents to F. & A. Myers, must be disallowed. They are charged in the account as money furnished the vessel. But it nowhere appears whether the bills which were paid by this money were themselves liens upon the vessel. The stipulation admits that the payment of these bills was made by the libellant after the goods covered by the bills had been delivered to the tug; but it does not appear what was the nature of the bills, or whether they could have been made the basis of a proceeding in rem. There is no proof whatever regarding the two items of fifty-three dollars and twelve cents and eighty-three dollars and sixty-eight cents, which must also be disallowed. For the residue, libellant is entitled to a decree, after deducting the amount received in the composition proceeding.

[1] [Reprinted by permission.]