

Case No. 7,287.

THE JENNY LIND.

{3 Blatchf. 513;¹ 35 Hunt, Mer. Mag. 452.}

Circuit Court, S. D. New York.

Sept. 10, 1856.

ADMIRALTY—PARTIES—MORTGAGE ON VESSEL—DEFAULT—POSSESSION.

1. It is a common practice, in equity and admiralty courts, to permit a party who becomes interested in the subject matter of a litigation during its pendency, to come in and protect his interest, if application is made within a reasonable time.
2. Where, the day after the levying of an attachment issued by the district court, on a libel in rem against a vessel, there was a default in the payment of an instalment due on a mortgage on the vessel, *held*, that such default gave to the mortgagee the right to the possession of the vessel, and that it was proper to permit him to come in and defend the suit.

{Cited in *Chester v. Life Ass'n of America*, 4 Fed. 492; *The Two Marys*, 10 Fed. 925, 12 Fed. 154.}

3. Under the statute of New York (2 Rev. St. p. 493, § 2), which gives a lien on a domestic vessel for supplies furnished to it, but provides, that if the vessel departs from the port at which she was when the debt was contracted, to some other port within the state, the debt shall cease to be a lien at the expiration of twelve days after the day of such departure, daily voyages with passengers and freight, from New York to Haverstraw, touching at Sing Sing and Tarry-town, are departures, within the meaning of the statute.

{Cited in *The Arctic*, 22 Fed. 127.}

{Appeal from the district court of the United States for the Southern district of New York.}

This was a libel in rem, filed in the district court, to recover for a running account of stores furnished to the steamboat *Jenny land*, commencing April 29th, 1854, and ending October 19th, 1854, and amounting in the aggregate to \$156.27. The claimant {Dennis Harris} was mortgagee of the vessel, and, on application to the district court, was allowed to come in and defend, and obtained a discharge of the vessel from the attachment, on giving the usual bond. The district court dismissed the libel, and the libellant {Albert Van Winkle} appealed to this court.

Dennis McMahan, for libellant.

William J. Haskett, for claimant.

NELSON, Circuit Justice. The default in the payment of one of the instalments due on the mortgage occurred on the 21st of October, 1854. This gave to the mortgagee the right of possession, and happened the day after the levying of the attachment under the libel. It has been urged that, as the claimant had no present right to the possession at the time the vessel was seized, he was improperly properly allowed to come in and defend. The position cannot be maintained. A party becoming interested in the subject matter of the litigation, after the institution of the suit, may be admitted to come in and protect his interest, if application is made within a reasonable time. This is a common practice, both in the admiralty and equity courts; and it would be very unjust, besides leading to vexa-

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tious litigation, were the rule otherwise. The party would necessarily be driven to a cross suit.

It was also urged, that a mortgagee had not such an interest in a vessel, as would authorize him to appear and defend. How this would be, in a case where the right to the possession did not exist, it is not material to determine. In this case, the right of possession existed; and, not only so, but the vessel was reduced to actual possession, and the mortgagee had a right to hold it for the satisfaction of his debt.

It was also urged that, assuming that the mortgagee had the right to come in and defend, for the purpose of protecting his interest; still the libellant has shown a valid lien upon the vessel, which the court should enforce. The Jenny Lind was a domestic vessel, and a lien for the stores depends upon a local law. The statute of New York, giving the lien (2 Rev. St. p. 493, § 2), provides that, if the vessel shall depart from the port at which she was when the debt was contracted, to some other port within the state, the debt shall cease to be a lien at the expiration of twelve days after the day of such departure. During the period within which this account accrued, the Jenny Lind was engaged in the daily transportation of passengers and freight from New York to Haverstraw, touching at Sing Sing and Tarry-town, Westchester county. It has been repeatedly held, that voyages to this extent were departures, within the meaning of the statute; and, if the twelve days elapsed before the libel was filed, the lien ceased.

I think that the decree below, dismissing the libel, was right, and should be affirmed.

¹ [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]