

Case No. 9,147.  
[10 Ben. 196.]<sup>1</sup>

THE MARTHA C. BURNITE.

District Court, E. D. New York.

Dec., 1878.

PRACTICE—STIPULATION FOR VALUE—BOND UNDER SECTION 941 OF THE UNITED STATES REVISED STATUTES.

1. A stipulation for value can be substituted for property in custody, at any time, by order of court
2. At any time before default, property in custody may be bonded in pursuance of section 941 of the Revised Statutes of the United States, without any other condition than is prescribed in that section:
3. But whether it can be so bonded as a matter of right after a default, quere.

In admiralty.

T. C. Campbell, for libellant.

Beebe, Wilcox & Hobbs, for claimant.

BENEDICT, District Judge. I greatly doubt whether a party can as a matter of right obtain the release of a vessel from custody by giving a bond under section 941 of the United States Revised Statutes after a default has been entered upon the return of the process. It seems to be the intention that the bond should be approved and either filed or returned by the marshal for the purpose of being filed with the process, and it is plainly

The MARTHA C. BURNITE.

intended that the bond should be given before any decree has been rendered in the cause. Of course, as in other cases, a stipulation for value may be substituted for property in custody at any time, by leave of the court, but that is a different thing from giving the bond provided for in section 941. The difficulty here is that there has been no default and no publication of notice upon which a default can now be taken. The right, therefore, to have a bond approved in pursuance of section 941 still exists, and may be exercised without any condition other than is prescribed in the section.

The application, therefore, to have terms imposed as a condition of being allowed to bond under section 941 must be denied.

The bond, being regular in form, and the sureties having justified on due notice to the libellant, must be approved.

MARTHA M. HEATH, The. See Case No. 7,113.

<sup>1</sup> {Reported by Robert D. Benedict, Esq., and Benj, Lincoln Benedict, Esq., and here reprinted by permission.}