

Case No. 10,213.

NEW YORK MAIL STEAMSHIP CO. V. THE
BAL TIC.

{5 Int. Rev. Rec 3.}

District Court, S. D. New York.

1867.

WHARFAGE—LIBEL IN REM—LOCAL LAW.

In admiralty.

J. T. Williams, for libelants.

Mann & Parsons, for respondents.

The following is the substance of the opinion of SHIPMAN, District Judge: "This is a suit, in rem, against the steamship Baltic to enforce a claim for wharfage. The libelants allege that they are lessees of a dock in the city of New York, and that the Baltic occupied a berth thereat, at various times named, in pursuance of an agreement between her owners and her libelants. The particulars of the agreement are not set out, and the court is not informed whether or not there was a fixed rate of compensation agreed upon between the parties. If the rate of wharfage was specified in the agreement, that would end the case, even if she was a foreign ship, for no lien would attach, and of course no proceeding in rem can be maintained. Ex parte Lewis [Case No. 8,310]."

Judge SHIPMAN then says that the vessel being owned and registered in this port, wharfage, even granting that it is a lien upon the ship on the same ground as other necessities, does not apply to this vessel. As to the claim that a lien is given by the local laws of this state, that is conceded; but that this lien can and ought to be enforced by this court is denied. After stating that the old rule, which he quotes, giving power to this court to enforce such a lien had been abrogated, and a new rule adopted, Judge SHIPMAN says: "The object of this alteration was to take away the power to enforce liens in rem,

created by the local law, and resting upon that alone. The St. Lawrence, 1 Black [66 U. S.] 522. The libel should therefore be dismissed with costs. Let a decree be entered accordingly.”

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