

## PORTER ET AL. V. THE SEA WITCH.

[3 Woods, 75.]<sup>1</sup>

Circuit Court, D. Louisiana. April Term, 1877.

MARITIME LIENS—PILOTAGE AND  
TOWAGE—CLAIMS ARISING FROM DIFFERENT  
VOYAGES—PRIORITY.

1. Pilotage and towage into port stand in the same rank of maritime liens with necessary supplies and repairs.
2. But a claim for towage furnished in one voyage has a lien superior to a claim for supplies furnished on a previous voyage.

[Cited in *The Lillie Laurie*, 50 Fed. 221.]

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

The *Sea Witch* was a foreign vessel which sailed from Belize, Honduras, on a coasting voyage, about September 16, 1876. She left Ruatan on Nov. 1, 1876, and reached the port of New Orleans, where she was seized and sold under process in this case. The claim of the libelant J. H. Porter was for a sail furnished the *Sea Witch* at Pensacola, Florida, on June 24, 1876. E. C. Lyle, an intervener, claimed for supplies furnished at Mobile, on December 1, 1875. The Ocean Tow Boat Company intervened upon a claim for towage due for towing the *Sea Witch* from the mouth of the Mississippi river to New Orleans upon her last voyage at the close of which she was seized in this case. The proceeds of the sale of the vessel were not sufficient to pay all the maritime liens, and a question arose between the Ocean Tow Boat Company and the other two creditors above mentioned, whether the claims of the former were entitled to priority of payment.

C. B. Singleton and R. H. Browne, for libelants.

Jos. P. Hornor, W. S. Benedict, and E. D. Craig, for interveners.

WOODS, Circuit Judge. There can be no serious question that pilotage and towage into port, etc., stand in the same rank with necessary supplies and repairs when furnished for the same voyage: *The Emily Souder*, 17 Wall. [84 U. S.] 666. But the contention here is, that as the towage was furnished on the last voyage of the schooner, and the claims of Porter and Lyle were for supplies furnished on previous voyages, the claim for towage is entitled to priority of payment. This claim seems to be sustained by the adjudged cases.

In *The Paragon* [Case No. 10,708], Judge Ware remarks: "The priority of the privilege for seaman's wages stands upon a principle affecting all privileged debts, that is, that among these creditors he shall be preferred who has contributed most immediately to the preservation of the thing. 2 Valin, Comm. 12, liv. 3, tit. 5, art. 10. It is upon this principle that the last bottomry bond is 1073 preferred to those of older date, and that repairs and supplies furnished a vessel on her last voyage take precedence of those furnished in a prior voyage, and that the wages of the crew are preferred to all other claims, because it is by their labors that the common pledge of all these debts has been preserved and brought to a place of safety. The same principle is recognized in *The Tri-mountain* [Case No. 14,175].

In the case of *The Hope*, reported in 1 Asp. 563, it was held that maritime liens are entitled to rank against the fund in the inverse order of their attachment upon the res, or that the later in time is the earlier in payment. In that case, it was also decided that the master's wages, which, by the merchants' shipping act of 1834, had been placed on the same footing as seamen's wages, were inferior in rank to a bottomry bond given upon the vessel on a voyage subsequent to that on which the wages were earned.

These and other authorities which might be cited show that wages earned and supplies furnished for the later voyage take rank as to priority of payment over wages and supplies earned or furnished for a former voyage. Whether this rule should apply to the short and frequent trips of river steamers, it is not necessary now to decide. As the pilotage was earned on the last voyage of the *Sea Witch*, and the supplies of libelant and intervener were furnished for former voyages, I am of opinion that the Ocean Tow Boat Company should be paid first out of the proceeds of the sale; that the residue of the fund, if any, should be applied first to the payment of the claim of Porter; and then to the payment of the claim of Lyle. Decree accordingly.

<sup>1</sup> [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]

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