

a mile distant, or less than three lengths, and when within some 15 or 20 seconds of collision, and this attempt was immediately reversed by an order to move on at all possible speed. It is most probable, from the situation, that a collision at that time was unavoidable, and that the order by the captain of the *Adelaide* to go at all speed offered the only chance of escape then remaining, and that this would have been successful if the *Grand Republic* had earlier slackened speed, and stopped and backed seasonably, as she was bound to do. Although I am not prepared, therefore, to hold the *Adelaide* in fault for this last order, nor for her hard-a-port wheel in connection with it, this does not in the least diminish her responsibility for her previous neglect of rule 21, which required her to slacken her speed from the time of the first contrary signals, when there arose obvious risk of collision. Had the *Adelaide* then slackened her speed, she would afterwards have had no difficulty in reversing at once, if necessary, and thus have easily avoided the collision.

The damages must, therefore, be apportioned between the two vessels, and a reference ordered to compute the amount; and, at the same time, proof may be taken as to the rights and interests of the various libelants and petitioners.

THE BELGENLAND.*

(Circuit Court, E. D. Pennsylvania. March 5, 1883.)

1. ADMIRALTY PRACTICE—APPEAL—SUPERSEDEAS.

An appeal to the supreme court of the United States from the judgment of the circuit court, affirming a decree made by the district court, duly entered, with stipulations approved by the court, does not operate as a *supersedeas*, or vacate the decree, so as to prevent the entry of judgment against the stipulators in the district and circuit courts.

2. JUDGMENT ON APPEAL—LIEN OF.

Upon an appeal to the supreme court, duly entered, with stipulations approved by the court, a judgment will be entered against the stipulators in the district and circuit courts, and such judgment will remain as a lien against them until the appeal to the supreme court shall have been finally determined.

Petition to Vacate the Entry of Judgment against stipulators in the district and circuit courts in admiralty.

*Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

In a cause of libel for collision by the bark *Luna* against the steamship *Belgenland*, the district court decreed in favor of the libelant, and upon appeal to the circuit court this decree was affirmed. *The Belgenland*, 5 FED. REP. 86; 9 FED. REP. 126; Id. 576. The petition of William G. Warden *et al.* was now presented to the circuit court, setting forth that upon the same day that the circuit court affirmed said decree an appeal therefrom to the supreme court of the United States was duly perfected, and a bond filed, with sureties, in the sum of \$70,000, duly approved by the court, but that judgment had been entered against the petitioners as stipulators in the district and circuit courts for \$51,954.14, and that this judgment was entered as a lien against all the real estate of the petitioners.

The petition further alleged that each of the appeals was a *supersedeas*, and that, therefore, the judgment had been improvidently entered, and prayed that the same might be vacated. The condition of the stipulation taken in the district court was:

"Now if the said claimant shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court *in which the said suit may be hereafter depending*, and shall fulfill and perform the judgment or decree which may be rendered in the premises, and also pay all costs, etc., this stipulation shall be void, otherwise in force, and execution may issue by virtue thereof at one and the same time against any or all the parties to this stipulation."

The condition of the bond filed upon appeal to the supreme court was that appellant shall prosecute his appeal with effect.

Morton P. Henry, for petitioners.

An appeal is a *supersedeas*, and vacates the judgment of the district and circuit courts. The cause is heard *de novo* upon appeal, and no judgment can be entered up as a lien until after final hearing. *The General Pinkney*, 5 Cranch, 281; *U. S. v. Preston*, 3 Pet. 66; *The New Orleans*, 17 Blatchf. 216.

Henry Flanders, *contra*.

The stipulator takes the place of the *res*, and if the decree be for the libelant a judgment should be entered against the stipulator. *The Alligator*, 1 Gall. 145; *The Wanata*, 95 U. S. 600-616; Rev. St. §§ 941, 967; Ben. Adm. § 547.

BUTLER, J., (McKENNAN, J., *concurring*.) Counsel for the petitioners admits that the court cannot interfere with the decree except upon the ground that it was entered *without authority*, and is therefore null and void—the record having been removed by appeal

and the term having passed. It is sufficient, therefore, to say that I do not doubt the court's authority to enter the decree against the stipulators, as it did. The uniform practice in the district has been to do so, under similar circumstances, and it is, in my judgment, sustained, not only by the general authority of courts of admiralty everywhere, but *here* especially, by the act of congress relating to this subject, approved March 3, 1847.

Whether, in view of the fact that new sureties are required on taking an appeal,—thus securing the libellant under such circumstances beyond all danger of loss,—it would be wise to so mould the decree as to avoid creating a lien against the stipulators pending the appeal, may well be considered hereafter. The inconvenience of such a lien may be very great, and the danger of having to submit to it may deter the most desirable individuals for such a service from assuming the obligations of stipulators.

The petitioners afterwards presented a petition to the supreme court of the United States for a *mandamus* to compel a modification of the decree as prayed above, which has been refused. 2 Sup. Ct. Rep. 864.—[REP.]

FREENEY and others v. FIRST NAT. BANK OF PLATTSMOUTH and others.

(Circuit Court, D. Nebraska. May, 1882.)

1. JURISDICTION OF CIRCUIT COURT—PROBATE OF WILL AND ADMINISTRATION OF ESTATE—COUNTY AND PROBATE COURTS.

As it is the settled law of Nebraska that the county or probate court has original and exclusive jurisdiction in the probate of a will, and the distribution of the estate therein, and that its judgment and order in such matter is final and conclusive unless appealed from, this court can take no step that would interfere with the administration and distribution of an estate in course of administration in such court.

2. SAME—ENJOINING ADMINISTRATION.

This court can neither enjoin the executor appointed by the probate court from proceeding in the discharge of his duties, and from attempting to take possession of the estate, nor the probate court itself from proceeding further.

3. SAME—PLEA TO JURISDICTION—REMEDY IN STATE COURTS.

Where the parties have an ample remedy by proceedings in the state courts, and this court clearly has no jurisdiction over most of the matters complained of, and as to the others the question of jurisdiction is extremely doubtful, a plea to the jurisdiction should be sustained.

In Equity. Plea to the jurisdiction of the court.

M. A. Hartigan and Webster & Gaylord, for complainant.

J. C. Cowin, for respondents.

McCRARY, J. The difficulties in the way of maintaining the jurisdiction of this court are the following:

1. It is now the settled law of Nebraska that the county or probate court has original and exclusive jurisdiction in the probate of a will, and that its judgment and order in such a matter is final and conclusive unless appealed from. *Loosemore v. Smith*, 11 N. W. Rep. 493. It follows that we have no power to grant any relief except such as might be granted upon the assumption that the will is valid.

2. The statutes of Nebraska not only give the courts of probate exclusive jurisdiction of the probate of wills, but also of the administration of the estates of deceased persons. Comp. St. Neb. p. 205, §

3. Thus it appears that we can take no step that would interfere with the administration of the estate by the probate court. It is said, however, that courts of chancery have a general jurisdiction to decree a distribution of an estate among the persons entitled to share therein. No doubt this is true as a general proposition, but we think it must also be true that, while the estate is in the hands of the proper probate court for the purposes of administration, no other court can interfere with it for the purpose of distribution. Indeed, it is not easy