

posing the stipulation to be taken before the proper officer, there must be some method of giving formal notice of the fact to the marshal, and advising him that the process for the arrest of the vessel has been superseded, and therefore he must surrender or deliver the vessel to the claimant upon demand.

In 2 Conkl. Adm. 98, it is said that "if the stipulation is taken and acknowledged before a commissioner of a distant port, he at once orders the vessel to be discharged; and if it is given in court, a *supersedeas* is immediately issued to the marshal. This is the only suggestion on the subject that I find in the works on admiralty within my reach, and, comparing it with the mode of proceeding in analogous cases, I think it furnishes a proper and convenient rule in the premises. The stipulation is intended to operate as a *supersedeas*, and whoever takes it ought to give or cause to be given notice to the marshal accordingly.

If this stipulation had been taken in court, notice would have been given to the marshal by a writ issued by the clerk, and called a *supersedeas*, because of its effect upon the former process. And if it had been taken before a commissioner, he should have given similar notice to the marshal by an order to the same effect. But in either case the writ or order would be served *upon* the marshal, and not *by* him; and by the claimant, his attorney or agent, delivering the same to him. The writ or order should contain a recital of the issue of the process, the allowance of the stipulation, and require the marshal to forbear the further execution of the process, and to surrender or deliver the property taken thereon to the claimant on demand. Of course he can make no charge for serving this writ or order, for, as I have said, he does not serve, but it is served upon him, so far as it is served at all. If, in consequence of it, he is put to any expense, as in transmitting it, or giving direction in pursuance of it to his deputy or keeper in a distant port, he may, I suppose, charge the same as a part of the expense incurred under the process for the arrest and custody of the vessel. See section 829, Rev. St; Rule 59, of the Civil Code.

The taxation of the clerk is affirmed and the appeal dismissed.

THE OSCAR TOWNSEND.

(District Court, N. D. Ohio. 1883.)

1. COLLISION—ANCHORING VESSEL IN RIVER—PRECAUTIONS.

Although anchoring in a river in the night-time or day is not necessarily improper or dangerous, and although it may be customary to do so during stress of weather, yet, when so doing in the night, great care must be used to make ample room and space in the channel for passing vessels, and to so locate the anchorage as to avoid possible danger.

2. SAME—EVIDENCE OF FAULT.

In the absence of a proper watch and proper lights on board the anchored vessel, in this case, she must be held in fault and negligent.

In Admiralty.

William H. Condon and *E. A. Angell*, for libelant.

Goulder & Weh and *Willey, Sherman & Hoyt*, for respondents and cross-libelants.

WELKER, J. The steam-barge *Oscar Townsend*, with the barge *Edward Kelley* in tow, came down the St. Clair river at 2 o'clock on the morning of October 19, 1881, and ran the *Kelley* into the schooner *Sunrise*, which was lying at anchor in the river near *Sarnia Bay*, and was the cause of great damage to the schooner, for which this libel suit is filed. The barge *Kelley* claims to be somewhat damaged, for which a cross-libel is filed by her owners against the *Sunrise*. The libelant alleges that the *Sunrise* was anchored at a suitable and proper place, and that its officers were guilty of no fault or carelessness, and that the collision occurred through the fault and carelessness of the *Townsend* and *Kelley*. This is denied by the answer, and it is alleged in the answer that the collision was occasioned by the fault of the *Sunrise*.

The court finds that the *Sunrise* was in the night-time anchored in the St. Clair river, and within the channel or roadstead usually taken at that point by vessels coming down the river at night; that, although anchoring in the river in the night-time or day-time is not necessarily improper or dangerous, and although it may be customary to do so during stress of weather, yet, when so doing in the night, great care must be used to make ample room and space in the channel for passing vessels, and to so locate the anchorage as to avoid possible danger; that the *Sunrise* was anchored at a dangerous place in the river, at a point where there was a strong current, and where her lights might have easily been confounded with those on the Canada shore beyond her by persons on vessels coming down the river, and difficult to distinguish from them; that the *Sunrise* did not have at the time a suitable and proper anchor watch to guard her from danger from passing vessels coming down the river; that she did not put up and keep up in good order to the time of collision suitable and proper anchor lights, to notify passing vessels of her locality, so as to avoid collision with her; that she did not comply with rule 10, Rev. St. § 4233, which requires that all vessels, when at anchor in roadsteads or fair-ways, shall exhibit, where it can best be seen, a white light, so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon; that she did not display, as it was her duty, a torch-light, when the lights of the *Townsend* and *Kelley* were first made, as they approached her, to enable them to see her and avoid a collision; that immediately before the collision she failed to change her position, as she might have done by putting her wheel to starboard instead of to port, and thereby cause her to

swing out of the way of the Townsend and Kelley,—in all of which respects the Sunrise was at fault and negligent; that the Townsend, in coming down the river, occupied the usual channel or roadstead at the point where the Sunrise was anchored and located; that it had proper lights and a proper watch at the proper places; that the lights of the Sunrise, being so dim at the time, were not seen by the Townsend far enough away to have avoided the collision, although proper diligence was used for that purpose; that when the lights were seen, being close upon the Sunrise, the master of the Townsend used proper seamanship in trying to avoid the collision; and that, therefore, the Townsend was not guilty of negligence or carelessness in causing the injury; that the Kelley, being the tow, was guilty of no negligence, and therefore not liable for the injury to the Sunrise.

The claim of the Kelley in the cross-libel not being pressed by counsel, the cross-libel is dismissed. Decree dismissing libel at libelant's costs. Appeal allowed.

THE ARCTURUS.

(*District Court, N. D. Ohio, E. D. April Term, 1883.*)

LIBEL FOR WAGES OF MASTER.

The master of a vessel has no lien on the cargo of the vessel for his wages beyond the amount of the freight thereof, and where, for any reason, he does not unload the cargo, he is only entitled to a lien upon such of the freight as the vessel has actually earned, that being the freight less what it costs to unload.

In Admiralty.

Mix, Noble & White, for libelant.

Goulder & Weh, for the Arcturus.

WELKER, J. The libelant was the master of the Arcturus, and had wages due him as such master from the owners of the vessel about the month of November, 1882. At that time he had on board the vessel a quantity of telegraph poles, owned by A. A. Colby, which had been carried on board the Arcturus, and were to be delivered at the port of Sandusky, upon which the said Colby was to pay freight in the usual way. Before the telegraph poles were unloaded at Sandusky the vessel was seized by the United States marshal under a libel filed by W. H. Wolf *et al.* against the Arcturus, so that the master could not, and did not, unload the poles at Sandusky, and Colby, the owner, was compelled to pay \$70 to procure the poles to be unloaded, and before he was allowed to do so he paid the whole freight money into the registry of the court which would have been earned by the Arcturus if the contract of affreightment had been ful-