

THE CHARLOTTE VANDERBILT.

(District Court, S. D. New York. January 4, 1884.

SHIPPING—SUPPLIES—MARITIME LIEN—MORTGAGE—PRIORITY—SECTION 4192.

For necessary supplies furnished a vessel in a state not that of her owner's residence, a maritime lien presumptively arises, and this lien will take precedence of a prior mortgage, duly registered, under section 4192 of the Revised Statutes. The mortgagee, by assenting to the use and possession of the vessel by the mortgagor for the purposes of navigation, without restriction, assents by implication to the creation of such maritime liens as by law arise incidentally in the ordinary business of the ship.

This libel was filed to recover a balance of \$468.30, with interest, for coal furnished to the steam-boat Charlotte Vanderbilt, at Philadelphia, in July and August, 1880. The steam-boat was at that time owned by a New Jersey corporation, which purchased the boat on May 10, 1880, and gave a consideration mortgage of \$25,500 to secure various promissory notes for the purchase price. The mortgage was duly recorded in the New York custom-house, and also in the custom-house at Camden, New Jersey, where the vessel was also enrolled by the corporation purchaser. The mortgage provided that the mortgagees should have possession of the ship until a default in its terms, and that, upon such default, the mortgagee might take possession. The bill of supplies for coal was incurred while the mortgagor was in possession and running the steam-boat, and before any default in the mortgage. This libel was filed on the second of September, 1880. On the thirtieth of August prior thereto, the mortgagee took possession of the steam-boat for a default in the terms of the mortgage, and advertised her for sale on the fifteenth of September, when she was sold for \$12,000, the mortgagee having intervened as claimant in this suit, and given the usual bond for the release of the vessel.

Marsh, Wilson & Wallis, for libelants.

Ten Broeck & Van Orden, for claimant.

BROWN, J. The boat in question was running as an excursion boat. The coal was furnished upon 22 different days, and was evidently necessary for the prosecution of her voyages. Being furnished in the port of another state from that of her owner's residence, under the ordinary maritime law of this country, the coal was presumptively furnished upon the credit of the ship as well as of her owners; and the testimony corroborates this fact. The libelants acquired, therefore, presumptively, a maritime lien upon the vessel for the coal thus supplied. *The Neversink*, 5 Blatchf. 539; *The Lulu*, 10 Wall. 192; *The Eliza Jane*, 1 Spr. 152; *The New Champion*, 17 FED. REP. 816, and cases cited.

It is urged that as the mortgage was duly recorded, as required by section 4192 of the Revised Statutes, prior to the time when these

supplies were furnished, the mortgage was a notice to all persons; and the mortgagees contend that all ports of the country, as regards them, were home ports, and that no lien could be thereafter acquired against them which would take precedence of the mortgage. The section of the Revised Statutes in question gives constructive notice to all persons of the existence of the mortgage. That its purpose is, however, only to give such constructive notice, is apparent from its excepting persons who have actual notice thereof from the effect of its provisions. In providing, as this mortgage did, that the mortgagor might have the possession and use of the vessel for the purposes of navigation, without restriction, the mortgagee necessarily assented by implication to the creation of such maritime charges and liens on the vessel as by law arise incidentally in the course of the business and navigation to which the mortgagee assented; and maritime liens for supplies thus arising take precedence, therefore, of the prior mortgage. That rule was laid down in this district in the case of *The E. M. McChesney*, 8 Ben. 150, and the same rule has been elsewhere sustained. *The Granite State*, 1 Spr. 277; *The Henrich Hudson*, 7 L. R. (N. S.) 93. See, also, *The Lulu*, 10 Wall. 192, 193; *The May Queen*, 1 Spr. 588.

The libelant is entitled to a decree for \$582.75, with costs.

THE MAGGIE ELLEN.¹*(District Court, E. D. New York. December 3, 1883.)***SALVAGE—COMPENSATION—COSTS TO NEITHER PARTY.**

A schooner grounded on Brigantine shoal, a dangerous shoal in the Atlantic ocean, in fair weather, with the wind light, the sea smooth, and the tide young flood. The bottom was smooth, she did not pound, nor leak, nor suffer any damage, nor set a distress signal. The value of the schooner was \$4,000. A tug, which came by, offered to tow her off for \$500 and her master offered to pay \$200, but neither offer was accepted, and the tug towed her off the shoal to an anchorage three miles distant, being employed some three-quarters of an hour, on the understanding that underwriters should fix the amount of compensation. On their refusal to do so, this suit was brought. The owners of the tug claimed \$1,000. *Held*, that there was no room to deny that this was a salvage service; that the service was worth \$200, and the offer of that sum should have been accepted. Costs were not given the libellant, because the efforts of the owners of the schooner to agree on an amount before the suit were not met in a proper spirit, and there was some reason to suppose there was the intention to compel payment of more than was just by pressure of legal proceedings. Costs were not given the claimant, as no amount was tendered, and the ground was taken that the service was towage, not salvage.

In Admiralty.*Owen & Gray*, for libellant.*Beebe & Wilcox*, for claimant.

BENEDICT, J. This action is to recover salvage for services rendered in towing the schooner Maggie Ellen off the Brigantine shoal. Brigantine shoal is a dangerous shoal in the Atlantic ocean, just above Absecom. On the afternoon of April 23, 1882, between 5 and 6 o'clock P. M., the schooner Maggie Ellen, laden with ice and bound to the southward, grounded upon this shoal. The wind at the time was light from the north-west, and the weather fair. The sea was smooth and the tide was young flood. The vessel herself was sound and staunch. The bottom was smooth; she did not pound; made no water, and suffered no damage whatever by reason of the grounding. No signal of distress was set. As the wind and sea were, and continued to be until about midnight, there is no reason to doubt that the schooner would have got off the shoal by means of her windlass and kedge. She was within reach of assistance from a life-saving station, and a life-saving crew was on the way to her relief when the tug Argus, also bound to the south, came within hail and tendered her aid for a compensation of \$500. The master of the schooner offered \$200, and after the master of the schooner had, by sounding, shown the master of the tug that he could approach the schooner without danger, the tug took hold of the schooner, upon the understanding that the amount of her compensation should be left to the underwriters at Philadelphia. Upon this understanding the tug towed the schooner off the shoal, and took her to a place of anchorage some

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.