

be allowed. While the duty of making entrance devolved upon the charterer's agent, the charterer was informed in advance that the entry had been made, and he should not therefore have incurred the expense of making it a second time. The service of a tug for which \$2 is charged was, as I understand, required only in making the entry, and should be disallowed. The \$5 charge for advertising should not be allowed; and the same must be said of \$10 for stationery, etc. Nor do I see anything in the evidence to justify the charge of \$50 "for attendance fee." The duties of this agent were confined to "custom-house business." He was not the general representative of the ship, and there is nothing in the evidence to show any connection between this business and the charges here referred to. Settlements for the freight, after making the deductions allowed, should have been made with the master or his agent. The payment however, to the owners to the extent made, should under the circumstances be credited to Mr. Spreckels. A decree may be prepared accordingly.

THE F. E. SPINNER.

UNION DRY-DOCK CO. v. THE F. E. SPINNER.

(District Court, N. D. New York. December 29, 1891.)

MARITIME LIEN—SALVAGE—EVIDENCE.

On a libel *in rem* against a vessel for the value of a chain used in raising her from the bottom of a river, it appeared that the libellant contracted by telegraph with a tug company to sell it the chain, and that he delivered the chain to a tug sent for it. He had no communication with the owners or master of the vessel, and there was nothing to show that he knew for what purpose the chain was wanted, except his testimony that he "supposed" and "inferred" that it was for raising the sunken vessel. Six weeks after delivering the chain he wrote to the tug company referring to "our agreement," and proposing to draw for the price of the chain. *Held*, that there was no evidence to support either a maritime lien for supplies furnished or for salvage upon the vessel raised.

In Admiralty. Libel *in rem* by the Union Dry-Dock Company against the F. E. Spinner.

The libel alleges that on September 17, 1885, the libellant furnished and delivered 1,480 feet of steel chain, worth \$863, to the steam propeller F. E. Spinner, at the request of her master and owners. That the libellant relied upon the credit of the vessel as well as that of the owners and master, and would not have furnished the chain except upon the credit of the vessel. That by reason of these facts the libellant acquired a lien upon the vessel for the value of the chain. The answer of the owner of the Spinner denies every allegation of the libel which seeks to charge the vessel with liability. On the 10th of September, 1885, the libellant received the following telegram:

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"DETROIT, Sept. 10th, 1885.

"To Capt. M. M. Drake, Supt. Union Dry-Dock, Buffalo, N. Y.: Want to buy eight or nine hundred feet two inch chain; understand you have it. What's your best price and terms? Answer quick.

"DETROIT TUG AND TRANSIT CO."

This was followed by various telegrams and letters, which culminated in an agreement between the libelant and the Detroit Tug & Transit Company as evidenced by the following telegrams:

"BUFFALO, Sept. 16, 1885.

"Detroit Tug & Transit Co., Detroit, Mich.: I will deliver to the tug you name on her arrival here the chain you speak of. My understanding is that you are to have this chain with the option of purchasing it, decision to be made and communicated to me by November first, at a price of forty dollars per ton, or you are to have it for forty-five days at a rental of five hundred dollars. Decision to be made as above, chain to be taken here without cost to us and returned here on same terms, if you choose to have it on rental, damage if any to be made good by you. All the above conditioned on my receipt from you at once of a telegram accepting above terms.

"W. BULLARD."

On the same day the following answer was received:

"DETROIT, MICH., Sept. 16, 1885.

"W. Bullard, Buffalo: Your telegram received; we accept terms and conditions stated therein about chains.

"DETROIT TUG & TRANSIT CO.,

"S. A. MURPHY."

Mr. Bullard was the general manager of the libelant at Buffalo. Prior to the first telegram of September 10, 1885, the Spinner was lying sunk in the Sault Ste. Marie river. The chain was delivered on board a tug sent by the Detroit Tug & Transit Company to Buffalo for that purpose, and was used in raising the Spinner by the International Wrecking Company, which company had a contract to raise her with the insurers, to whom the wreck had been abandoned.

After the propeller had been raised, and on the 3d of November, 1885, the following letter was sent by Mr. Bullard:

"BUFFALO, N. Y., Nov. 3, 1885.

"Mr. S. A. Murphy, Prest. Det. Tug & Trans. Co., Detroit, Mich.—DEAR SIR: By terms of our agreement of Sept. 16th you were to communicate to me by Nov. 1st your decision as to whether you would pay rental of \$500 for 45 days' use of steel chain loaned you or whether you would purchase same at \$40 per ton. I have heard nothing from you in regard to the matter. Can I draw on you at sight for the value of the chain at the agreed price named above?
Yours, truly, W. BULLARD, Gen'l Mgr."

This letter was never answered. The chain was not returned or paid for.

Josiah Cook, for libelant.

Sherman S. Rogers, for respondent.

COXE, J. The libel cannot be sustained for salvage. There is neither allegation nor proof of a salvage service. The action is *in rem* to recover

of the Spinner \$863, the value of a chain furnished, as the libelant alleges, for the use and on the credit of the vessel and at the request of her master and owners. In order to recover the libelant must prove these allegations. It has wholly failed to do so. The contract was negotiated by telegram and letter. The master and owners of the vessel were not connected with it in any way. The only parties were the libelant on the one side and the Detroit Tug & Transit Company on the other. The latter company hired the chain for 45 days, agreeing to pay \$500 rental with an option of purchase at \$40 per ton if accepted prior to November 1st. There is not the slightest allusion to the sunken propeller from one end of the correspondence to the other. There is nothing therein to indicate that the libelant knew for what purpose the chain was intended. The two persons who represented the libelant in the negotiations, Capt. Drake and Mr. Bullard, testify that they "supposed" and "inferred" that the chain was to be used in raising the propeller, but neither of them says that it was furnished to the propeller "at the request of her master and owners and upon the credit of said vessel;" neither of them says that there was an intent on the part of the libelant, at any time, to hold the vessel responsible. Indeed, it appears that, six weeks after the delivery of the chain, the libelant still looked for payment to the tug and transit company, and to no one else. On the 3d of November, the libelant, addressing the tug and transit company, refers to "the terms of our agreement" and proposes to draw at sight for the value of the chain.

The contract is too plain to require a resort to inferences drawn from extraneous considerations; but were presumptions necessary or permissible it might be pertinent to inquire whether it is likely that the libelant intended to part with valuable property upon the credit of a foreign bottom, lying as an abandoned wreck, under 138 feet of Canadian water, 500 miles from Buffalo. The fact that individuals interested in the vessel were also connected with the tug company and the wrecking company does not avail the libelant. The evidence shows an agreement between the libelant and the tug company as clear and unmistakable in terms as can well be imagined. A finding that the libelant parted with its chain on the credit of the propeller or with intent to look to her in any contingency for payment, would be wholly unsupported by the proof. It is to be regretted that the libelant has lost its chain, but this is a result which usually follows where an irresponsible party has been trusted.

The libel is dismissed, with costs.

THE D. B. STEELMAN.

(District Court, E. D. Virginia. November 8, 1880.)

1. MARITIME LIENS—VESSEL OWNED BY WIFE—FURNISHINGS BY HUSBAND.

When a half interest in a vessel is owned by a married woman residing in the District of Columbia, where she is permitted by law to hold property in her separate right, free from the control and obligations of her husband, the husband is entitled to a lien on the vessel for funds and supplies furnished, and expenses incurred upon her, when his claim is proved in the usual way.

2. SAME—PARTIAL PAYMENTS—APPLICATION.

When advances are made and lumber, etc., furnished to a vessel at various times during a period of about two months, but all during one stay in port, and as part of one transaction, and the account embraces some items which have the force of maritime liens, and others which do not, a cash payment will be applied in discharge of the latter, and the lien of the former will be preserved.

3. SAME—WAIVER OF LIEN—TAKING NOTES.

The taking of notes payable in two, three, and four months, for advances made and materials furnished to a vessel, does not of itself operate as a waiver of the maritime lien.

4. SAME—TAKING MORTGAGE.

Nor is the maritime lien waived by taking a mortgage on the vessel to secure such notes. *The Ann C. Pratt*, 1 Curt. 340, and *The Swallow*, 1 Bond, 189, distinguished.

5. SAME—LIENS UNDER STATUTE.

Revised Code Md. art. 87, §§ 44-48, giving a lien on vessels used on Chesapeake bay on filing in the county court a verified statement of the claim, and providing that the act shall not entitle the claimant to preference over creditors secured by prior mortgage, abrogates the maritime lien for materials furnished in Maryland; and a lien secured under its provisions is subordinate to a claim secured by a prior mortgage on the vessel.

In Admiralty. Libel *in rem* for wages. Decree for libelants and claimants.

Walke & Old, for mortgagee.

Sharp & Hughes, Ellis & Thom, and White & Garnett, for petitioners.

HUGHES, J. The schooner D. B. Steelman, of Baltimore, Md., has been libeled in this court by three of her seamen; and sundry materialmen and other claimants have filed petitions setting out claims against the vessel. By general consent the vessel has been sold, and the proceeds paid into the registry for distribution. These are insufficient to meet all the claims. Of course the first charge against the fund is the costs of this suit. Next in order of priority are the claims of the seamen. They were hired by the month in Baltimore; and, as the vessel laid up in this port without finishing her voyage, they must be paid their wages for the time claimed, and \$1.50 each for their passage back to Baltimore.

The vessel was owned by J. Hexter and his sister, Mrs. Silverberg. Under the laws of the District of Columbia, where Mrs. Silverberg lives, married women may acquire and hold personal and real property in separate right, free from the control or obligations of their husbands. Her half of this vessel is thus held and owned by Mrs. Silverberg, as is shown by the schooner's custom-house papers, issued by the collector of Baltimore. One of the claimants by petition in this case is Silverberg,