

statute, as if it had been conferred by itself, and consequently upon the same footing as all maritime liens; the order of payment between them being determinable upon its own principles."

And in the case of *The Madrid*, 40 Fed. Rep. 677, 681, Mr. Justice LAMAR observes that "this lien given by the local statute * * * is itself in the nature of a maritime lien;" that is, as the context shows, as respects its *status* and scope. See, also, *The Wyoming*, 35 Fed. Rep. 548, 550; *The Menominee*, 36 Fed. Rep. 197, 204; *The North Cambria*, 40 Fed. Rep. 656.

By an exceptional practice stated by Mr. Justice BRADLEY in *The Lot-tawanna*, 21 Wall. 558, 580, to be anomalous, but founded upon colonial usage, the authority of state legislation to establish a lien *in rem* for the satisfaction of maritime contracts, or maritime torts, is recognized, (*The J. F. Warner*, 22 Fed. Rep. 342, 345, and cases there cited;) and see *Manchester v. Massachusetts*, 139 U. S. 240, 11 Sup. Ct. Rep. 559. But this exceptional and anomalous authority is not to be extended beyond the mere allowance of a lien, when conferred. *The Sylvan Glen*, 9 Fed. Rep. 336. Amid somewhat conflicting decisions, the weight of authority is, I think, to treat state liens, in respect to their *status*, scope, and effect, the same as strictly maritime liens, (*The Madrid, supra*;) and in effect, as Mr. Justice LAMAR observes, "in the nature of a maritime lien itself." While having, therefore, similar attributes and privileges, they must be subjected to the same limitations as regards laches and the rights of other lienors or *bona fide* purchasers, as those maritime liens which they most resemble, without reference to any superior qualities or attributes sought to be imparted to them by state legislation. See cases above cited. On both grounds the libel must be dismissed, with costs.

THE ELEANOR.

THE THOMAS W. HAVEN.

THE ELEANOR *et al.* v. THE THOMAS W. HAVEN.

(District Court, D. South Carolina. January 15, 1892.)

1. SALVAGE—COMPENSATION.

A schooner worth \$15,000, with a cargo worth \$5,000, bound from New York to Georgetown, S. C., when off Frying-Pan shoals, discovered an apparently abandoned vessel, water-logged, and with her cargo of lumber washing about her deck. The schooner lay by her all night, and the next day towed her to Georgetown bar. Finding that she could not cross the bar, the master of the schooner procured two tugs, went on the lumber vessel with a small crew, and had her towed to Charleston. Neither life nor property of the salvors was in any danger. The vessel was sold for \$1,950, and her cargo for \$1,500. *Held*, that the harbor expenses, pilotage, harbor towage, wharfage, etc., should be charged to the ship, the layage and expense of discharging the cargo to the cargo, and that \$950 should be allowed as salvage.

2. SAME.

The fact that the master of the lumber vessel had not abandoned her finally, but had gone to seek the assistance of a tug, and had taken his crew because he thought it dangerous to leave them there without a boat, was immaterial to the amount of the recovery, as the rule of a generous recompense would be applied, as in all other cases of salvage.

In Admiralty. Libel for salvage. Decree for libelant.

J. N. Nathan, for libelant.

G. D. Bryan, for respondent.

SIMONTON, J. The *Eleanor*, a three-mast schooner, valued at \$15,000, with a cargo valued at about \$5,000, was on her regular voyage from New York to Georgetown, S. C. On 2d October last, when off Frying-Pan shoals, about 12 m., she sighted the schooner *Thomas W. Haven*, and bore down on her. The schooner was in 9 fathoms water, about 25 miles from land, loaded with lumber, under deck 153,000 feet, and on deck 87,000 feet, water-logged, sails flapping, some halyards cut, hatches afloat and drifting, deck-load loose and washing about the deck. Not being able to get aboard of her that day, the master of the *Eleanor* lay along-side that night, and the next day boarded her. He found no one aboard, no boats, no charts or nautical instruments, and no provisions. Concluding that she was derelict, and with reason, (*The Ann L. Lockwood*, 37 Fed. Rep. 233,) the master of the *Eleanor* put his mate and two men aboard, and, taking her in tow, proceeded on his way to Georgetown. The *Haven* steered badly, as she was full of water, and, pitching about, parted the hawser. Another and a stronger one was bent, and they reached Georgetown bar without incident the next morning. Finding that the *Haven* could not cross that bar, the master of the *Eleanor* secured the services of two tugs, the *Brewster* and the *Congdon*, and, leaving his own vessel in charge of his mate and the pilot, he went on the *Haven* with a small crew, and was towed to Charleston by the tugs. That port was reached in safety. With the exception of a choppy sea and swell the first day, and a fresh breeze between 10 and 2 o'clock on the last night, the weather was fine. Although the *Haven* was found apparently abandoned as stated, her master says that he left her to seek the assistance of a tug; that he took his whole crew, because he had but one boat, and did not like to leave any one on board so far from land; that landing at Little river he got conveyance to Smithville, hired a tug, and went out in search of his schooner, and could not find her.

It is not necessary to go into the question whether the *Haven* was really derelict. Whether derelict or not, the salvage award will not depend on any fixed rule of proportion. It will be reached as in every other case of salvage, (*Post v. Jones*, 19 How. 161,)—a generous recompense to the salvors, so as to encourage them and also to stimulate others. The service is the relief of property from an impending peril of the sea. Humanity induces the relief, whether the value of the property be great or small. The merit consists in the relief, not in the magnitude of the property saved. *The Pomona*, 37 Fed. Rep. 444. The conduct of the salvors, and their motives, so far as they can be gathered

from their conduct, enter largely into the estimate of the reward. The salvors thought, and had every reason to think, that the property was derelict. In this case there was no danger to life incurred or averted. And the salvaging vessel was at no time placed in peril. With great propriety she went at once to a vessel evidently in distress, and when she found her helpless, and apparently abandoned, lay by her all night, and the next day took her in safety. The gross value of cargo and vessel have been ascertained by sale,—cargo at \$1,500; vessel at \$1,950. Certain harbor expenses have been incurred, and the cargo has been discharged. The harbor expenses, pilotage, harbor towage, wharfage, etc., will be charged to the vessel; layage and expenses attending discharge of cargo, to the cargo. Salvage award is fixed at \$950, with costs, to be apportioned between the gross value of the vessel and of the cargo.

THE PEERLESS.¹

BYERS *et al.* v. THE PEERLESS.

(District Court, S. D. New York. January 6, 1893.)

COLLISION—HELL GATE—EAST CHANNEL—DUTY TO ALTER COURSE IN ACCORDANCE WITH WHISTLE—RULE 19.

A tug, with two small schooners in tow on a hawser, was going up the east channel of Hell Gate with the first of the flood-tide, and was about in the middle of the channel. A steam-yacht, bound west, took the east channel to avoid meeting two sailing vessels, directly in front of her. On seeing the tug, the yacht gave one whistle and ported her helm. The tug immediately responded with one whistle, but did not alter her wheel. As soon as the yacht saw that the tug did not change her course she reversed, but too late to avoid the tug, which was sunk. *Held*, that the yacht had the right to take the east channel, and her navigation was without fault; that the cause of the collision was the failure of the tug to alter her course in accordance with the whistle, which there was nothing to prevent her from doing, and she was consequently solely liable for the collision.

In Admiralty. Suit to recover damages caused by collision. Libel dismissed.

Carpenter & Mosher, for libelants.

Wing, Shoudy & Putnam, for claimant.

BROWN, J. At about 8 o'clock P. M. on June 26, 1891, the libelants' steam-tug Thomas Y. Boyd, while going up the easterly channel of Hell Gate between Flood rock and the Astoria shore, in the first hour of the flood, and having in tow, on a hawser of 40 fathoms, two small schooners, each about 65 feet long, came in collision with the steam-yacht Peerless, bound west, at a point a little below the line running from Hallet's Point light to the northerly end of Flood rock. The stem of the yacht ran into the starboard side of the tug. The force of the blow, with the

¹Reported by Edward G. Benedict, Esq., of the New York bar.