sion of the owner, that she might earn the balance of the debt; but it is equally a part of the contract in this case that the one-half of the bill for repairs was to be paid promptly at the end of 30 days after the completion of the repairs. Had the claimant or her owner *pro hac vice* performed that part of the contract, a different case might have been presented from that now under consideration. But it is well settled that a maritime lien is entirely consistent with a credit given for its payments, unless such lien be expressly waived. Repairs put upon a vessel under the circumstances that the repairs were put upon this vessel, raise a strong presumption that they were put there upon the credit of the vessel, and not upon the credit of the owner; and it is incumbent upon the claimant to show by weight of evidence that the lien was actually given up, in order to rebut that presumption. The burden is upon him. Not only does he fail to show such action on the part of the libelant corporation, but, when pressed for the amount of the claim due to it, he himself recognizes the right of the libelant to lien, and on that ground, to-wit, that the libelant has such lien upon the vessel for the bill, insisted that it ought to be lenient, and not press him into immediate settlement. This plea is entirely inconsistent with the theory that the libelant corporation had surrendered its lien. The true principle is that if the labor charged for has been performed, or the repairs done and the material furnished, for the vessel, no matter in what way the owner agreed to pay, if he fails to pay according to the agreement, he who furnishes the materials, or performs the labor, or completes the repairs has a right to resort to the security provided by law. I am of the opinion, therefore, that in this case the libelant corporation never intended and in fact did not divest itself of its right to lien; that right was reserved to itself in case the owner failed to comply with the terms of his contract, and pay one-half of the cost of the repairs within 30 days after the repairs were completed. This defense cannot avail the claimant.

As to the items which go to form the amount of the Starin claim, I cannot agree with the contention of the counsel for the claimant, that they do not afford ground for a maritime lien. These repairs, as it appears from the testimony, were put upon this vessel under the supervision of Mr. Bates, and they were paid for, at his request, by the libelant corporation. They constituted a lien upon the boat before payment, and it is settled that all advances of money made to pay off claims of such a nature, upon the credit of the vessel, as these claims were, and which constitute liens in admiralty, have the benefit of the lien, with the same rank as the original claim. The item of 334 meals furnished to a portion of the crew at a hotel near Elizabethport, while the vessel was being repaired, cannot be included in this claim. Under the circumstances, they afford no basis for a lien, and must be stricken out. Let the usual decree be entered.

THE DAVE & MOSE.

FAHEY *v.* MAYOR, ETC., OF CITY OF NEW YORK.

(District Court, S. D. New York. January 29, 1892.)

1. WHARVES AND WHARFINGERS—DUTY TO DREDGE.
   The city is liable for injury to boats occasioned by its failure to remove at reasonable intervals the accumulations from drains at public wharves to which boats are invited, and at which the city collects wharfage.
2. SAME—DUTY OF BOAT AT WHARF—SOUNDINGS—INQUIRIES.
   It is negligence in a boatman to tie up for the night at a dock on the Harlem river at 155th street without sounding, or inquiry as to the depth of water, or breasting his boat off.

In Admiralty. Suit by Michael Fahey against the mayor, etc., of New York city, to recover for loss of canal-boat sunk at respondent's wharf. Decree for libelant.

Hyland & Zabriskie, for libelant.

William H. Clark, Corp. Counsel, and *James M. Ward*, Assistant, for city.

BROWN, District Judge. On the 16th of September, 1891, the libelant's canal-boat Dave & Mose, loaded with 275 tons of coal, moored alongside the platform dock at 155th street and the Harlem river, to which she was consigned. Her bow was headed down river and projected 12 feet below the lower end of the dock, and her stern extended about the same distance above the upper end. Between 1 and 2 o'clock during the following night as the tide went down, the forward part of the boat caught on the bottom; and when the men on board were called between 1 and 2 A.M., she had a list to port, and with the help of others could not be shoved off. The bottom being sloping and the stern of the boat free, she got a twist; and the stern, careening to port, took in water so as gradually to pull her off until she sunk. The bottom was of silt or sand, with no stones. Adjacent to the dock the water at mean low tide varied from 6 feet near the upper end of the dock to 4 feet at and below the lower end, where a drain of the surface water from Seventh avenue brought in considerable quantities of silt and sand. Twenty feet out from the dock the depth of water at mean low tide was from 12 to 17 feet; 30 feet out, from 15 to 20 feet. The canal-boat was 17 feet wide. Similar boats have been accustomed to go to the dock for several years past. Only two cases of injury from grounding are shown by the evidence; and the proof is not clear whether those damages were at the dock or above. It was not uncommon for boats coming to the dock to catch temporarily, but they were easily shoved off without damage. The depths of water above stated are those ascertained by disk soundings, that is, to the top of the soft silt or sand. Soundings by the rod were about a foot or a foot and a half greater near the dock, and two or three feet greater further off.