

payment of their claims in full from the registry of the district court. To hold otherwise would be to allow the fund against which an appellant was prosecuting his claim to be entirely withdrawn, and thus deprive him of all the fruits of his appeal and decree should the appellate court decide in his favor. When there is a fund in the district court against which several libelants are prosecuting claims, and it is insufficient to pay all, and the claim of one libelant is disallowed, and he appeals to the circuit court, no payments should be made from the fund until after the decree of the circuit court upon the appeal. By such an appeal the whole decree is brought up. The part not appealed from remains here in full force, to be executed on the final termination of the cause. What is not reversed is still in force and a necessary part of the decree of this court, and is to be executed as such. *The Roarer*, 1 Blatchf. 1. The result of this view is that the entire fund should have been sent up to this court with the appeal. "The appeal carries up the *res*, or money in the registry of the district court, to the circuit court, and, when the rights of the parties are adjudicated there, the court must carry into execution its own decree." *Montgomery v. Anderson*, 21 How. 386.

THE CARA.

WILMOT *et al.* v. THE CARA.

(Circuit Court, D. Louisiana. April Term, 1880.)

MARITIME LIENS—SUPPLIES AT HOME PORT—CONSTRUCTION OF STATUTE.

Under Rev. Civil Code La. art. 3274, declaring that "no privilege should have effect against third persons, unless recorded in the manner required by law," the owner of a vessel who has chartered her to another is a "third person," with respect to persons who claim a lien under the state law for supplies furnished in the home port. *Beard v. Chappell*, 23 La. Ann. 694, followed.

In Admiralty. Libel by W. G. Wilmot & Co. against the Cara for supplies, Lagan & Mackinson interveners. On appeal from district court. Libel and intervention dismissed.

The libelants, W. G. Wilmot & Co., and the interveners, Lagan & Mackinson, assert a lien upon the defendants, the steamboat Cara, for supplies furnished in the home port. The lien is claimed under the local law of Louisiana, (Rev. Civil Code, art. 3237.) The defense, set up by way of exception, is that the contract for supplies was not recorded, as required by law, and therefore no lien attached. The libelants claimed for coal furnished the Cara to the amount of \$345, between January 13 and 23, 1879. Their lien therefor was not recorded until March 7, 1879. The interveners, Lagan & Mackinson, claim \$74.07 for other supplies furnished between January 9 and 13, 1879, and their lien was not recorded until March 10, 1879. Rev. Civil Code, art. 3274, declares: "No privilege should have effect against third persons, unless

recorded, in the manner required by law, in the parish where the property to be affected is situated. It shall confer no preference on the creditor who holds it over creditors who have acquired a mortgage, unless the act or other evidence of the debt is recorded on the day that the contract is entered into." The libelants and interveners contended, in reply to this, that the claimant was not a "third person," within the meaning of article 3274, Rev. Civil Code. The supplies were furnished to the Cara, by the libelants and interveners, while the Cara was in possession of Dodge & Doherty, to whom she had been chartered by her owner, the claimant, on January 7, 1879, for three months from that date. At the time the steamboat was seized she had been returned to and was in possession of the claimant.

B. Egan, for libelant.

Joseph P. Horner, for claimant.

WOODS, Circuit Judge. The act or other evidence of debt on which the libelant bases his claim was not recorded on the day the contract was made, as required by article 3274, Rev. Civil Code, nor within seven days thereafter, as provided by an amendment passed in 1877. See Acts 1877, p. 59. The only question is therefore whether the owner of the boat falls within the term "third persons," found in article 3274. We think the case of *Beard v. Chappell*, 23 La. Ann. 694, furnishes an answer to this question. In that case it was held that, "the debtor for supplies being a lessee, the owner of the plantation and the stock thereon is a 'third person,' within the meaning of article 123 of the constitution. If, therefore, the owner of the plantation, a third person, was in possession of the cotton at the time the privilege was asserted by the furnisher of supplies, then, and in such case, the furnisher could not hold the same, because, not having had his privilege recorded, and the cotton having passed into third hands, the privilege was lost." This authority covers this case. As against the owner of the boat, who was a third person in possession, the libelants and interveners had no lien, because their contract had not been recorded as required by law. A lien is necessary to the relief they ask. *The Lottawanna*, 21 Wall. 558. The libel and intervention must be dismissed, with costs.

BRADLEY, Circuit Justice, concurred.

THE NETTIE WOODWARD.

WESTERN TRANSIT Co. *et al.*, Intervening, v. THE NETTIE WOODWARD.

(District Court, E. D. Michigan. April 30, 1893.)

MARITIME LIENS—PRIORITY—MARITIME TORT—SEAMAN'S WAGES.

The maritime lien for damages arising from collision takes precedence of the lien for seaman's wages accruing prior to the collision. *The John G. Stevens*, 40 Fed. Rep. 331, and *The F. H. Stanwood*, 49 Fed. Rep. 577, followed.

In Admiralty. On petitions for distribution of proceeds of sale of the schooner Nettie Woodward.

Statement by SWAN, District Judge:

The questions in this case arise upon petitions for distribution of the proceeds of sale of the schooner Nettie Woodward, which was condemned and sold under the process and order of this court at the suit of the original libellant. The proceeds in the registry of the court are insufficient to pay the decree awarded against the vessel. The Western Transit Company holds a decree for damages resulting to its steamer Commodore from a collision in the St. Clair river, for which the schooner was adjudged solely in fault, and asks that its decree may be declared a lien upon the proceeds of sale paramount to those of the intervenors, who are the master and crew of the schooner, and in whose favor decrees for wages accruing prior to the collision have been entered. The master and seamen unite in a petition praying priority of payment of their decrees over that for the damages caused by the collision. The Nettie Woodward is a Canadian vessel, and, under the laws of the dominion of Canada, the master is given a lien for wages co-ordinate with that of the crew.

W. E. Leonard, for claimant Phillip Cross.

Moore & Canfield, for Western Transit Co.

SWAN, District Judge. The authorities upon the subject have been so ably and exhaustively reviewed in the opinion of Mr. Justice BLATCHFORD in *The John G. Stevens and R. S. Carter*, 40 Fed. Rep. 331, and later in that of Judge JENKINS in the court of appeals for the seventh circuit in the case of *The F. H. Stanwood*, 49 Fed. Rep. 577, that nothing remains to be said upon it. With their reasoning and conclusions I fully concur. In accordance therewith, the order upon these petitions will be that the decree of the Western Transit Company for damages suffered by the collision be first paid out of the fund in the registry before payment of the decrees in favor of the intervenors. The costs taxed in favor of the original libellant are secured by the stipulation filed, and are recoverable from the stipulators, and for these execution will issue if necessary. In view of the nationality of the crew and the vessel, the rule applied works no injustice, since it gives the seamen's claims the same relative rank, as against that for the collision, as is accorded by the settled principles of the English admiralty courts.