

It is further insisted that the proceedings before the clerk of the circuit court were defective and insufficient to effect a removal of the case from the state court, in that no writ of *habeas corpus cum causa* was issued by said clerk. As the defendants were on bail, and not in actual custody, a writ of *habeas corpus* was unnecessary. The bail bond filed in the state court, by express provision of law, was effectual to secure the appearance of the defendants in the circuit court. The defendants made no application in their petition for a writ of *habeas corpus*. Before such a writ can be properly issued, it must be applied for, and the petition must allege that the party is imprisoned or detained against his will, without authority of law.

I have prolonged this discussion further than I at first intended. The judgment of the superior court against the defendants for the offense with which they were charged and convicted by a jury was not oppressive or unreasonable. I feel sure that the judge of the superior court, in his ruling, was prompted by a high sense of judicial duty. I entertain the highest respect for the state supreme court, and read with pleasure and benefit its able, learned, and instructive opinions; and I sincerely regret that an occasion has arisen which has produced a conflict of judicial opinion and authority.

THE NELLIE MAY.

UNITED STATES *v.* THE NELLIE MAY.

(District Court, D. Rhode Island. May 27, 1892.)

PENALTIES AND FORFEITURES—PASSENGER ACT—LIBEL IN REM—WHEN MAINTAINABLE.

Under the passenger act of August 2, 1882, (22 St. at Large, p. 186,) a libel against a ship to recover the penalties for violation of that act can only be maintained after the shipmaster's trial and conviction of the same offense, and for the purpose of enforcing payment of the fine imposed upon him.

In Admiralty. Libel to recover penalty for violation of the passenger act of 1882. Dismissed.

Rathbone Gardner, Dist. Atty., for the United States.

Amasa M. Eaton and *Walter B. Vincent*, for claimant.

CARPENTER, District Judge. This is an information and libel filed by the attorney of the United States for this district against the schooner *Nellie May*, wherein it is alleged that the said schooner is an American vessel, belonging to a citizen of the United States, and that Joas J. Godinho, being master of said schooner, has transported from Brava to Providence 48 emigrant passengers without there having been provided for said passengers the accommodations required by an act to regulate the carriage of passengers by sea, approved August 2, 1882, and in violation

of the first, second, third, and fifth sections of that act; and that by reason thereof the vessel has become liable to the penalties provided by said act. Claim is made by Antonio Coelho, part owner of the vessel, who moves that the libel be dismissed, because it is not therein alleged that Godinho has been convicted of the alleged infraction of the statute. I am clear that the libel must be dismissed. The whole scheme of the statute (22 St. at Large, p. 186) is to forbid the performance of certain acts by the master of a vessel, and to denounce against him various penalties for disobedience; and it further provides in section 13—

“That the amount of the several fines and penalties imposed by any section of this act upon the master * * * for any violation of the provisions of this act shall be liens upon such vessel, and such vessel may be libeled therefor in any circuit or district court of the United States where such vessel shall arrive or depart.”

The vessel is thus liable for the fines imposed by the act. But the act imposes no fine except upon such delinquents as have been convicted. It states, indeed, for example, in the first section, that “the master of a vessel coming to a port or place in the United States in violation of either of the provisions of this section * * * shall be fined fifty dollars, * * * and may also be imprisoned not exceeding six months.” Doubtless, however, in this and all similar clauses of the act the words “being duly convicted” are necessarily implied. The words of the statute therefore do not impart a primary liability of the vessel. And a consideration of the whole scope of the statute, I think, makes it clear that the liability of the vessel is only ancillary, and that the purpose of the remedy by libel against the vessel is only to enforce the payment of a penalty already primarily denounced by judgment against the master. The lien on the vessel is a security for the payment of the fines. If it be not so, then the owner of the vessel might be compelled in the admiralty to pay the penalty for acts which, according to the judgment of the court on the law side, have not been committed. Results such as this do sometimes happen as the result of lawful proceedings in court, but they ought not to happen in consequence of the judicial construction by the same court of two clauses in the same statute. Libel dismissed.

THE VENEZUELA.

INSURANCE CO. OF NORTH AMERICA *et al.* v. THE VENEZUELA.MERRITT *et al.* v. SAME.

(District Court, S. D. New York. May 14, 1892.)

SALVAGE—STRANDING—MERITS OF DIFFERENT SALVORS—SUBORDINATE HELPERS.

The steamship *Venezuela* went ashore on Brigantine shoals, off the coast of New Jersey. Her agents in New York employed the libelants *Merritt et al.* to float her, and several steamers were at once dispatched by the latter with wrecking appliances. Prior to their arrival at the ship, a wrecking steamer and lighter belonging to the libelants the Insurance Company of North America *et al.* had arrived at the shoals, and had offered their services, which were declined by the master of the *Venezuela* on the ground that the matter had been referred to the agents in New York. On the arrival of the *Merritt* boats the services of the vessels of the other libelants were accepted by the master in charge of the *Merritt* boats, but in no other way than as assisting him, and as subordinates to him, and in his employment. The ship was taken off by the united efforts of all the libelants. Separate libels were thereupon filed by the salvors, to recover compensation for the service. The evidence showed that the control of the service rested entirely with the *Merritts*; also that their appliances were two or three times greater than those of the other libelants. The value of the *Venezuela* and her cargo was \$900,000. Her owners did not deny the salvage service, and offered \$40,000 as total salvage, which was agreed to. *Held*, that the libel of the insurance company, though that company acted as a subordinate helper only, could not be dismissed; that the only question remaining was as to the shares of the different libelants; and that *Merritt & Co.* should receive \$33,500, and the other libelants \$8,500.

In Admiralty. Libel for salvage. Decree for libelants.
George A. Black, for Insurance Company of North America.
Benedict & Benedict, for I. J. *Merritt* and others.
Coudert Bros., for the *Venezuela*.

BROWN, District Judge. On the 5th of February, 1892, the *Venezuela*, a steamship of 2,900 tons, went ashore on Brigantine shoals, off the coast of New Jersey. The value of the steamship, cargo and freight, was upwards of \$900,000. She was got off between 2 and 3 o'clock A. M. of February 7th, through the united assistance of the above-named libelants as salvors, all of whom are engaged in that business. The above libels were filed to recover salvage compensation. The answer to each libel admits the rendering of a salvage service, but denies some of the matters stated in the libels, and alleges that the ship was got off mainly by the use of her own engine. The causes were heard together. At the commencement of the trial the defendants offered to allow decrees for \$40,000 for the whole service, which has been agreed to by the libelants as a fair compensation for the whole work; and the trial proceeded with reference to the respective rights and shares of the two libelants.

The evidence shows that at about 4 o'clock in the afternoon of February 5th, a telegram was received by the agents of the *Venezuela* in New York, stating that the steamship was aground; that the *Merritt Wrecking Company* was on the same afternoon employed by them to get the