

testimony, as to their method of sampling, or as to the care taken by them to obtain true and proper samples of the damaged sugar for the chemist's analysis.

On the whole, I am inclined to sustain the commissioner's ruling in this respect, although not because there is any evidence, or any special reason in this case to believe, that there was any intentional unfairness in selecting the samples from the damaged bags; but it is obvious that the samples would be inferior to the average, either if the samples were drawn from the wetter parts of the bag, or if the wetter parts drawn out were not thoroughly mixed with the drier parts upon the table. The liability to considerable error is obvious, unless special care was taken to draw the samples fairly from the bags, and to mix them thoroughly, before the final drawing of samples from the table for the chemist. The practice in other cases of marine damage requires that reasonable protection be afforded to the other side against either mistake or intentional exaggeration of damages, by giving an opportunity to the other side to be present at surveys and examinations. After these sugars were sampled, they went into immediate process of refining, and there was no further opportunity for examination. Had the samples been taken by samplers agreed upon by both parties, or by samplers appointed by each side, I should consider the polariscope test based thereupon of the greatest value and weight.

In the present case, however, the representative of the libellant in submitting the claim for damages, estimated the depreciation at $3\frac{1}{2}$ per cent., or one-half the amount indicated by the polariscope test, in connection with a claim for loss of weight. This depreciation was admitted by the defendant and adopted by the commissioner. To this item should be added the value of the 26,664 pounds, as the least presumable contents of the 88 empty bags above stated, with interest. With this modification the report is confirmed, and the other exceptions overruled.

THE ADVANCE.

HARD et al. v. THE ADVANCE.

(District Court, S. D. New York. July 11, 1894.)

MARITIME LIENS—ADVANCES—BY SHIP'S AGENT.

When bankers, acting as agents for a line of steamers in a foreign port, are used to advance the steamers such moneys as they may need on leaving, and to render an account monthly for such advances and their commissions, and to draw on the steamship company for the amount due, they are giving credit to the company, and have no lien on the ships for their advances.

In Admiralty. Libel by Anson W. Hard and others against the proceeds of the sale of the steamship Advance, for certain disbursements and commissions. Libel dismissed.

Cary & Whitridge and W. P. Butler, for libellants.

Carter & Ledyard and Mr. Baylies, for Atlantic Trust Co., mortgagee.

BROWN, District Judge. The above libel was filed by the libelants, bankers in New York, to enforce an alleged maritime lien for moneys advanced at Victoria, Brazil, by a branch house of the libelants' firm, for the purpose of disbursing the steamship Advance upon her last departure from that port before the failure of the United States & Brazil Mail Steamship Company, her owners, in February, 1893.

The libelants' branch house had been acting as the agents of the company's steamers at Victoria for about a year previous, under a power of attorney executed to them by the steamship company, dated March 3, 1892. This power of attorney authorized them "to sign bills of lading, receive and deliver goods, contract for freight, issue passage tickets, receive money, audit and settle claims, and generally to do and perform the business of steamship agents for and in behalf of said company at the port of Victoria, Brazil, aforesaid." The course of business under this power of attorney was for the Victoria house, as the ship's agents, to advance such moneys as were necessary for the company's various ships on sailing from Victoria, which left there about once a month; to render an account thereof to the steamship company, including their commissions of 5 per cent. on the freights obtained at Victoria, and $2\frac{1}{2}$ per cent. on their advances; and after crediting any collections of money made there, to draw on the steamship company at New York at 30 days' sight for the residue.

The advances in this case were made in the usual course of business, without any agreement for a lien, or any hypothecation of the ship or freight, or any understanding that the advances were made upon the credit of the ship or freight. The balance due for disbursing the Advance when she left Victoria in February, 1893, was \$661.23; and the libel is filed for that amount. Of this balance a little over two-fifths is made up of commissions, and the rest is for advances. A draft at 30 days' sight was drawn on the company at New York as usual, and forwarded to the libelants' principal house here for collection. On presentment it was not accepted or paid, the company being then in the hands of a receiver.

Upon the above facts, and I find no other facts to modify their force, the great weight of authority is, that the dealings between the steamship company and the agents of their ships at Victoria were presumptively on the personal credit of the owners alone, and that no maritime lien can be implied. See *The Esteban De Antunano*, 31 Fed. 920; *Insurance Co. v. Ward*, 8 C. C. A. 229, 59 Fed. 712; *The Raleigh*, 32 Fed. 633, affirmed 37 Fed. 125; and other cases there cited.

It is said that the branch house at Victoria contained some different partners from the New York house, and that the moneys supplied to disburse the ships were really the moneys of the New York house supplied to the Victoria branch. But this does not change the relations of the parties. The only dealings of the steamship company, or of their masters or officers, were with the Victoria branch house under the power of attorney given to that house. The money supplied by the New York house to the Victoria

branch, if the latter was legally a different body, became the mon-
eys of the latter. The libelants, in that event, could claim a lien
by subrogation only, and in this case there was no lien to which
they could be subrogated.

The cases of supplies in a foreign port by material men, and
others, who were not the agents of the owners, are here inap-
plicable.

On these grounds, the libel must be dismissed, with costs.

THE ALVIRA.

DE LANO et al. v. THE ALVIRA (BATCHELDER et al., Interveners.)

(District Court, N. D. California. August 7, 1894.)

No. 10,849.

1. MARITIME LIENS—LIENS UNDER STATE STATUTES—RULES APPLICABLE.

Liens arising under local statutes for supplies, materials, and repairs
furnished in the home port are assimilated to general admiralty liens, and
the principles relating to maritime liens are in general applied to them.
But the two are not always exactly alike in all their features and inci-
dents. Thus, the principle that supplies furnished in a foreign port when
the owner is with his ship are presumably furnished on his personal
credit is inapplicable to liens in the home port, for, the owner being resi-
dent there, this would wholly defeat the lien.

2. SAME.

Under the general principles of admiralty law relating to maritime
liens, applicable to the creation of liens under a local statute (Code Civ.
Proc. Cal. § 813), to give efficacy to such a lien there must be (1) a neces-
sity for the supplies, materials, or repairs; (2) a necessity for credit; and
(3) credit must be given to the vessel. But proof of necessity for the sup-
plies, etc., carries with it a presumption of the second requisite,—the neces-
sity for credit.

3. SAME—NECESSITY FOR REPAIRS—WHEN SHOWN.

The fact that a freight vessel is chartered to do passenger business, for
which she is totally unfitted unless repairs are made, and that liberty
to make repairs is given, together with an option to purchase at a fixed
price on the expiration of the charter party, is sufficient proof of necessity
for the repairs.

4. SAME—RELIANCE ON VESSEL'S CREDIT—BOOK ENTRIES AS EVIDENCE.

Great importance is not to be attached to the fact that material and
repair men gave credit on their books to the vessel alone, or to both the
vessel and the party ordering the materials and repairs, or to the latter
alone; but the intent is rather to be gathered from all the facts and evi-
dence in the case.

5. SAME—REPAIRS ORDERED BY CHARTERER—WHEN LIEN EXISTS.

The fact that materials and repairs are furnished upon the order of the
charterer, who is personally liable, and that the owner is not personally
liable, does not prevent the vesting of a lien under a local statute (Code
Civ. Proc. Cal. § 813) when the charterer is owner pro hac vice, and the ma-
terial and repair men believe him to be the general owner, and have no
cause to suspect otherwise. *The Samuel Marshall*, 4 C. C. A. 385, 54 Fed.
396, distinguished.

6. SAME—BURDEN OF PROOF.

It seems that the rule stated in *The Patapsco*, 13 Wall. 329, in relation
to foreign liens for supplies, namely, that where credit is shown to have
been given to the vessel there is a lien, and the burden of displacing it is