THE HAVANA.

LIBERTY STEAMBOAT CO. v. TURNER. SAME v. REED. SAME v. ROSSMAN. SAME v. ROBERTS et al.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

Nos. 115–118.

MARITIME LIENS—HOME PORT—FOREIGN OWNERSHIP.

A maritime lien for necessary repairs and supplies, furnished in the port of enrollment, may be enforced against a vessel owned by a corporation created by another state.

Appeal from the District Court of the United States for the Southern District of New York.

This was a libel by Henry B. Turner against the steamer Havana, the Liberty Steamboat Company, claimants, for repairs and supplies, and was heard, with three other libels against the same vessel for the same purpose, respectively by Andrew Reed, Jacob Rossman, and George I. Roberts and others. Decrees were rendered for the libelants in each of the cases (54 Fed. 201), from which the claimant appeals.

Wm. S. Maddox, for appellant.
Geo. W. Murray, for Turner.
Mark Ash, for Reed and Rossman.
H. D. McBurney, for Roberts.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. These are appeals from four decrees of the district court, Southern district of New York, sustaining maritime liens for repairs and supplies furnished to the steamer Havana by the respective libelants. The claimant assigns as error that the Havana was in her home port when the repairs and supplies were furnished, and that they were furnished on the orders of the owner, and not on the credit of the vessel. It appears that the steamer was owned by the Liberty Steamboat Company, a New Jersey corporation. It is well settled, therefore, under the authorities, that when in New York, although enrolled there, she was in a foreign port, the residence of a corporation being the state which has incorporated it, although the individual stockholders may reside elsewhere. The Plymouth Rock, 13 Blatchf. 505, Fed. Cas. No. 11,237. Upon an examination of the record on appeal and the new proofs taken in this court we concur in the opinion of the district judge that the several libelants relied upon the credit of the vessel, and that Schrader, who ordered the repairs and supplies, was practically the master, exercising all the ordinary functions of that office except the actual navigation of the ship, which was in charge of Pertaen, who, although described as master, seems in fact to have been but the pilot. The repairs and supplies were necessary to the vessel, were furnished to her in a foreign port, and, in the absence of satisfactory proof of an agreement between libelants and owner that the owner should be exclusively liable for payment, they are liens on the vessel. The several decrees are affirmed, with interest and costs.

WISCONSIN MARINE & FIRE INS. CO.'S BANK v. LEHIGH & F. COAL CO. (MOLSON'S BANK, INTERVENER.)

(Circuit Court, N. D. Illinois. November 5, 1894.)

1. INSOLVENT CORPORATION—UNLAWFUL PREFERENCE—WHAT CONSTITUTES.
The president of an insolvent corporation, whose tangible property was in the custody of the law, gave a bank the company's note, payable on demand, for a debt not due. Suit was commenced on it the next day. The company filed its appearance, pleaded the general issue, waived a jury, and consented to an immediate hearing. Execution was issued, and returned nulla bona, and on the same day the bank filed a creditor's bill. A director of the company was individually liable, as guarantor and otherwise, for the debt due such bank. *Held* an unlawful attempt to give the bank a preference over other creditors of such company.

2. SAME—DISTRIBUTION OF ASSETS—RIGHTS OF CREDITORS.
In the absence of any attack on the bona fides of the debt, and of any actual fraud in such proceeding, such bank was entitled to share ratably with all other creditors of such company in the distribution of its assets by a receiver.

Bill by the Wisconsin Marine & Fire Insurance Company's Bank against the Lehigh & Franklin Coal Company, in which the Molsons' Bank intervened. Complainant demurred to the intervening petition. Demurrer overruled.

C. E. More, for complainant.
Weigley, Bulkley & Gray, for receiver.
Peckham & Brown, for Molsons' Bank.
Chas. S. Miller, for defendant.

JENKINS, Circuit Judge. Treating the intervening petition as amended as proposed,—which I do not understand to be opposed,—the case stands thus: On the 17th of April, 1893, the Lehigh & Franklin Coal Company was wholly and entirely insolvent, had ceased to do business, and its property in the state of Wisconsin had during the preceding week been attached by creditors, of all of which the complainant had knowledge. The company was indebted to the complainant at that time; and on that date the president of the coal company executed a note, payable on demand, without grace, for $66,336.25, for an indebtedness not then matured. For the indebtedness to the bank one A. C. Yates, a director of the coal company, was personally and individually liable, the indebtedness being in the form of notes and drafts upon which Yates was maker, indorser, or guarantor, and was covered by a general guaranty running from Yates to the bank. The president of the coal company delivered the note to the solicitors of the coal company, who placed the same in the hands of an attorney, Mr. More, connected in business and occupying the same office with said solicitors. On the 18th of April, Mr. More commenced suit in this court upon such note in favor of the bank against the coal company. Contemporaneously therewith the coal company filed its appearance, pleaded the general issue, filed a stipulation waiving a trial by jury and consenting to an immediate hearing, and thereupon judgment was immediately en-