THE ALLIANCA.

THE SEGURANCA.

THE ADVANCE.

HUNTINGTON v. THE ALLIANCA, et al.

(District Court, S. D. New York. October 14, 1895.)

SHIPPING—BANKER'S ADVANCES—MARITIME AND EQUITABLE LIEN.

Upon a further reference to a Commissioner and hearing upon the Commissioner's report as regards any equitable or maritime lien against the above vessels for banker's advances as against the mortgagee of the vessels on the claims heretofore considered, (See Freights of The Kate, 63 Fed. 707; The Allianca, Id. 726, 65 Fed. 245). *Held*, that no independent equity against the mortgagee was shown, and the rulings of the previous cases were re-affirmed.

In Admiralty.

Benedict & Benedict and Maxwell Evarts, for petitioners.

Carter & Ledgard, Mr. Baylies, and W. W. Goodrich, for Atlantic Trust Co.

BROWN, District Judge. The principal reason for allowing a second reference in the above matter was to permit the petitioners to show dealings or circumstances, if there were any, as between them and the mortgage bond-holders, that might be sufficient to create an equitable right of priority as against the mortgage trustee, even though no lien upon the ships existed in the petitioner's favor. No dealings or circumstances of this kind have been shown, nor has any evidence been given different from that previously before the Court, except a short re-examination of Mr. Babbidge, the Secretary, which adds nothing to the petitioner's previous case.

Upon the urgent argument of counsel, however, I have re-examined and re-considered the testimony, and re-examined the cases referred to. I do not find in them any principles not previously considered by me, and am unable to change the views previously expressed. See Freights of The Kate, 63 Fed. 707; The Allianca, Id. 726, 65 Fed. 245.

It would not be useful to recount the additional arguments addressed to the court concerning the matters of fact. Other considerations, which the evidence sufficiently shows, prevent any change in my previous findings.

The petition is, therefore, dismissed.

SCHWARZCHILD et al. v. NATIONAL STEAMSHIP CO.

GOLDSMITH v. SAME.

(District Court, S. D. New York. April 28, 1896.)

BILL OF LADING—SALVAGE PRIVILEGE—DAMAGE TO SALVOR'S CARGO BY DELAY—UNNECESSARY DEVIATION—RES ADJUDICATA.

The clause in bills of lading reserving leave to "tow and assist vessels in all situations," does not justify an unnecessary deviation in rendering a salvage service by going to a distant port, instead of to the one most reasonably accessible in the particular circumstances of the case: *Held*, therefore, that the defendants' steamer America, after undertaking the towage of the disabled steamer Hekla to Halifax, a near, safe, and reasonably sufficient port, was not justified in taking her to New York, involving about three times the delay incident to towage to Halifax; and that the defendants were therefore liable for the depreciation in the America's cargo of live cattle, and the fall in market price during the additional delay caused by towage to New York instead of to Halifax. *Held*, also, that a previous dismissal of the libellants' petition to participate in the libel for salvage, brought against the Hekla by the owners of the America, was not res adjudicata as respects the present claim for damages.

In Admiralty—Damages to Cattle—Salvage.

Butler, Notman, Joline & Mynderse, for libellants.
John Chetwood, for respondents.

BROWN, District Judge. (1) The previous decrees dismissing the petitions of the above libellants upon their intervention in the salvage suit brought by the owners of the America against the Hekla (62 Fed. 941) cannot be treated as res adjudicata, as respects the above libels, inasmuch as the subject matter of the litigation is not the same. In the former petitions the claim made was a right to participate in a salvage award, in a suit in rem against the Hekla, in which a lien upon that ship was an essential condition. In the present libels the claims are for damages against the owners of the America, as carriers, for an alleged violation of their contract of carriage.

(2) The libellants claim to have suffered damage through an unnecessary detention of their cargo of live cattle by the America in rendering a salvage service to the Hekla, by towing the Hekla to New York after she had once begun her towage towards Halifax, the nearest port; and that by this change the America unnecessarily greatly increased the damages to the libellants' cargo incident to a towage to Halifax, which it is claimed is all the salvage service that was reasonably necessary. The respondents justify under the stipulation in the bill of lading, giving the America leave to "tow and assist vessels in all situations." The proper construction of this clause, and the limitations to be put upon it, were considered in the case of The Wells City, 57 Fed. 317, 318, in this court, and on appeal in 10 C. C. A. 123, 61 Fed. 857, 859. The result of the discussion in the court of appeals, as indicated in the opinion delivered by Wallace, Circuit Judge, is that while such a general privilege in the