

service, and he also became personally liable to them; and it may well be argued that it is contrary to the principles of equity for him to now impair the value of the security for mariners' wages by enforcing his rights as mortgagee, unless the wages be first paid.

With the acquiescence of all parties interested, the vessel has been sold by the marshal, and Cantillion became the purchaser, for the sum of \$1,800; and he is now claiming the proceeds of the sale, after payment of costs, to apply on the indebtedness of the several owners to him; so that, if he should prevail in defeating the libelant and the intervener from recovering their wages, the result of the adventure may be summed up as follows: Cantillion will have the \$350 paid by Johnson, and for the balance, of less than \$1,000 on account of supplies and the marshal's costs upon the sale of the vessel, will have absorbed the entire earnings of the vessel and her crew, and acquired the vessel itself, and still hold the libelant and the intervener indebted to him for a considerable part of the promissory notes given for the purchase price of their interests in the vessel. All this by his cleverness in persuading these men to purchase his interest in the vessel before hiring them. I consider that the justice of the case requires that these men should receive their wages from the money in the registry, and it will be so decreed.

Against the claim of John Johnson, intervener herein, for supplies furnished, on the credit of the vessel, under contract with Nelson, as managing owner, there seems to be no defense. The decree will also award payment to him of the amount sued for.

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#### THE GLEN IRIS.

#### BURTIS v. THE GLEN IRIS.

(District Court, E. D. New York. December 2, 1896.)

#### ADMIRALTY—SALE OF VESSEL—LIEN ON DOMESTIC VESSEL UNDER STATE LAW—COSTS—DISTRIBUTION OF PROCEEDS.

In disposing of the proceeds of the sale of a steam tug plying in New York harbor, against which decrees exceeding in amount such proceeds have been rendered upon default in favor of different parties for seamen's wages, damages for collision, and for repairs, supplies, and wharfage, extending over a year and a half,—the claims of the latter class being made liens under the state law by specifications filed in the county court,—the claims for wages having been first paid in full, and the sum remaining being insufficient for all other claims, priority in the distribution of the remainder was given to those claims for which monthly bills had been rendered and liens obtained within 40 days before the vessel was attached, and before the incurring of the liability for collision. Next in order of payment was placed the claim for damages by collision which had accrued 30 days before the first libel was filed; and the remainder of the fund was applied, so far as it would go, towards liens contracted subsequent to the incurring of liability for damages by collision. *The Gratitude*, 42 Fed. 299, followed.

On July 29, 1896, Divine Burtis, Jr., filed a libel against the steam tug *Glen Iris* for repairs, from April 18, 1895, to June 2, 1896, under which the tug was attached, and afterwards, on August 26, 1896, sold for \$1,050.

On July 31st, the Moquin-Offerman-Heissenbittel Coal Company filed a libel against the tug for coal furnished on monthly bills between June 1, 1895, and July 31, 1896, claiming a lien on the tug as a domestic vessel under the New York statute of April 24, 1862, and its amendments. On August 3d, Robert Keasby filed a libel against the tug for supplies and repairs furnished in December, 1895, also claiming a lien under the state statute. On August 7th, Joseph Meron, owner of the canal boat Gen. S. Moffitt, filed a libel against the tug for a collision occurring on June 28, 1896. On August 11th, H. G. Townsend and two others filed libels against the tug for wages. On August 12th, Caroline Ruther filed a libel against the tug for supplies furnished between May 16, 1896, and July 7, 1896, claiming also a lien under the state statute. On the same day, Bernard H. Seemann filed a libel against the tug for supplies furnished between May 16 and July 7, 1896, claiming a lien under the state statute. On August 17th, George E. Lanagan filed a libel against the tug for repairs made between July 7 and 14, 1896, claiming a lien under the state statute. On August 19th, Eugene Sullivan filed a libel against the tug for wharfage from February 14, 1895, to June 12, 1896, claiming also a lien under the state statute. No appearance was made on behalf of the tug in any of the cases. Upon reference to the commissioner, testimony was taken in the several cases, and upon the commissioner's report a decree was entered in each case against the tug for the amount found to be due, the aggregate considerably exceeding the proceeds of the sale of the tug. The decree for seamen's wages was paid in full, and the causes are now brought on for hearing as to the disposition of the remainder of the proceeds of the sale of the tug.

Macklin, Cushman & Adams, for Burtis.

Alexander & Ash, for the coal company and Lanagan.

Peter S. Carter, for Keasby, Ruther, and Seemann.

Hyland & Zabriskie, for Meron.

James Troy, for Sullivan.

J. P. Henderson, for Townsend.

BENEDICT, District Judge. In these cases several questions have arisen in regard to the distribution of the proceeds of the tug Glen Iris, a domestic vessel, which was sold under a decree of this court. Claims for wages, as to which none of these questions can arise, have been already paid, and the fund is not enough to pay all the other claims. It will be sufficient for the case, as I understand it, for me to say that the clerk, in distributing the proceeds, after payment of the fees of the officers of the court, should pay, first, the liens which existed upon the vessel under the state law, excluding all cases in which monthly bills had not been rendered 40 days prior to the incurring of the liability to Meron for negligent towing of his boat, June 28, 1896, and making a rest in the monthly accounts for supplies at that date; next should be paid the claim of Meron; and, out of any surplus remaining after paying Meron's claim, the liens that were created subsequent to the contracting of the liability to Meron. Costs and disbursements should be paid with each claim in its order. The claim for wharfage will take the same course. The amount of wharfage due at the time of the origin of Meron's claim should be paid prior to that; the rest of it, subsequent. The application of the rule for retaining priority of liens in such cases, laid down in *The Gratitude*, 42 Fed. 299, produces the above results. None of these questions arose in the case of *The S. W. Morris*, 59 Fed. 616, where the fund was sufficient to pay all.

## HOLMES et al. v. UNITED STATES.

(District Court, D. Connecticut. February 5, 1897.)

## JURISDICTION OF COURTS—CLAIMS AGAINST UNITED STATES—CANCELLATION OF JUDGMENT LIEN.

Chapter 359, Acts 1887 (Supp. Rev. St. p. 559), giving the court of claims and district courts jurisdiction to hear and determine claims against the United States, does not authorize those courts to entertain a petition to cancel a judgment lien alleged to have been unlawfully placed upon the property of the petitioners by an officer of the United States in an attempt to enforce a judgment recovered by the United States.

Henry G. Newton, for complainants.

Chas. W. Comstock, Asst. U. S. Atty.

TOWNSEND, District Judge. In equity. The petition herein alleges that prior to December 16, 1889, the attorney for the United States for this district obtained a judgment against one Rocco Calvello as surety on a bond, and on said day filed a judgment lien on certain real estate in said district, in which said Rocco Calvello had never had any interest, except a tenancy by curtesy as the husband of Mary Calvello, then deceased, who had owned the same in fee; that said interest was not then liable to attachment or execution; and that these petitioners are, respectively, the owners, mortgagor, and mortgagee of said real estate. They pray, either that said lien may be adjudged void and may be canceled, or that "a decree may be made that unless the United States of America pay to the petitioners the amount due to them upon said mortgages, within such reasonable time as this court may limit, said United States of America be foreclosed of any right or equity to redeem said mortgaged premises." To this petition the attorney for the United States has filed a plea claiming that this court has no jurisdiction to grant such relief. The argument of counsel for the petitioners is based upon chapter 359 of the Acts of 1887 (Supp. Rev. St. p. 559), which provides that the court of claims and the district court shall have jurisdiction to hear and determine "claims founded upon the constitution of the United States or any law of congress, except for pensions, or upon any regulation of an executive department, or upon any contract, expressed or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable." Counsel for the petitioners claims that this statute is a remedial one, intended to confer jurisdiction upon this court in all cases other than those sounding in tort, and that this lien is an attempt on the part of the United States to enforce the contract upon which the judgment was obtained.

It is unnecessary to consider all the jurisdictional questions raised by counsel for the United States. The jurisdiction of this court is defined and limited by the federal constitution and laws. It cannot entertain suits against the United States except in cases