

LOCHMORE S. S. CO., Limited, v. HAGAR et al.

(District Court, E. D. Pennsylvania. January 22, 1897.)

No. 57.

1. ADMIRALTY PRACTICE—CROSS LIBEL—RULE 53.

Admiralty rule 53, requiring security from the respondent in a cross libel for a counterclaim arising out of the same transaction as the original libel, applies to a case in which the original libel was in personam, but the vessel to which the suit relates was attached. The proceeding is then in effect in rem.

2. SAME.

The object of rule 53, requiring security to respond in damages from the respondents in cross libels in certain cases, is not merely to compel an appearance, but appears to be to place the parties on an equality.

This was a libel in admiralty by the Lochmore Steamship Company, Limited, owner of the steamship Kilmore, against Walter F. Hagar and John H. Thompson, trading as W. F. Hagar & Co. The cause was heard on motion to vacate security on the cross-libel.

J. Rodman Paul, for libelants.

Horace L. Cheney, for respondents.

BUTLER, District Judge. Rule 53 reads as follows:

"Whenever a cross-libel is filed upon any counter claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court on cause shown shall otherwise direct; and all proceedings on the original libel shall be stayed until such security is given."

It is thus seen that the language of the rule applies to all cases of cross-libel. In *Refining Co. v. Funch*, 66 Fed. 342, the court questioned the applicability of the rule to cases where the original libel is in personam. That subject need not be considered at this time. While the original libel here is in personam in form, it prays for an attachment; and the vessel to which the charter party sued upon relates, was attached, and the proceeding therefore is in effect in rem. The object of the attachment was not simply to procure the respondents' appearance but to collect the money demanded, from the vessel. Her release could only be effected by entering security for the debt, as in ordinary proceedings in rem. The libelants may have had no lien until they attached the vessel, but thereafter they had; and to realize on this lien was the object of their subsequent efforts. It was unimportant to them whether the respondents appeared or not; the value of the vessel exceeds their claim. The rule must therefore be held applicable to the case. The libelants urge that as they reside here and may be served, security should not be required; that the object of the rule is simply to compel the original libelants (when foreigners) to appear. If such had been the object it could have been attained more readily by providing for service on the proctors of such libelants. Again if an appearance alone was contemplated the security should be for an appearance simply; and the rule would doubtless have so provided. It is more probable that the object was to place the parties on an equality.

If the original libelants in this case had satisfied the court of their ability to pay the cross-claim, as they were afforded opportunity to do, it is possible that they might have been relieved (in the exercise of the court's discretion under the rule) from entering security; but as the case stands there is nothing to warrant a vacation of the order; and the application is therefore dismissed.

THE OTTUMWA BELLE.

MISSISSIPPI COAL & ICE CO. v. THE OTTUMWA BELLE.

(District Court, S. D. Iowa, E. D. February 8, 1897.)

1. **EQUITABLE ESTOPPEL—MARITIME LIENS.**

Claimants, being about to purchase a vessel, and having heard that libelant company had some claim against her for supplies, wrote to it, asking if it had such a claim, and the amount thereof, but without disclosing the purpose of the inquiry. Libelant answered that it had a claim for coal, etc., furnished, amounting to about \$50. Claimants, relying on this statement, purchased the vessel, and afterwards libelant libeled her for \$169.77. *Held*, that libelant was estopped to claim the larger sum; that it was not necessary for claimants to disclose their reason for writing the letter; and libelant, having undertaken to answer an inquiry evidently relating to a business matter, was bound to disclose the truth.

2. **SAME—INTENT TO MISLEAD.**

An active intent to mislead is not essential to an equitable estoppel by a party's statements. If the statements were calculated to mislead, and did actually mislead, another, acting on them in good faith, and in the exercise of reasonable care and judgment, this is sufficient.

In Admiralty.

Upon February 10, 1896, the Mississippi Coal & Ice Company, a corporation, brought its claim into this court for \$169.77 for supplies by it furnished to the steamer Ottumwa Belle, between the dates of April 24 and October 2, 1895, inclusive; said steamer at and between the said dates being duly employed in the business of commerce and navigation between ports of different states of the United States upon the Mississippi river. By due process said steamer was taken into the custody of the marshal. The claimants, S. & J. C. Atlee, by due delivery bond released said steamer, and now intervene, and state: That they are the owners of said steamer. That, about October 11, 1895, said claimants were negotiating for the purchase of said steamer. That they made due examination for maritime liens against her. That, being informed that the Mississippi Coal & Ice Company, libelant herein, had or claimed to have, some demand for coal furnished said steamer, said claimants, for the purpose of arranging to pay and discharge such demand, on the — day of October, 1895, wrote to said libelant, asking it if it had any claim against said steamer for supplies furnished, and, if so, the amount of same. That, in response thereto, libelant wrote to claimants, informing claimants as follows: "Replying to your favor of the 9th inst., would say we are furnishing the Ottumwa Belle with coal, ice, tile, etc. They owe us an account amounting to about \$50.00. Since August 8th they have been paying us cash for all goods furnished." That thereupon claimants, relying on and believing said statement to be true, and that libelant's demand was as therein stated, purchased said steamer. Wherefore said claimants allege said libelant is estopped from now making any demand in excess of the amount so by it stated in its said letter to claimants, and claimants bring into court, and have deposited with the clerk, the sum of \$50, with all costs accrued up to date of such deposit, and tender same to libelant in full of said demand, and ask for release and discharge of said delivery bond. The present hearing is on exceptions filed by libelant.