DANIEL DALSTROM and others v. THE OUTFIT OF THE SCHOONER "E. M. DAVIDSON."

(*District Court, E. D. Wisconsin.* January term, 1880.)

WAGES—SALVAGE—CONFLICTING CLAIMS.—Under the circumstances of this case it was *held* that the wages earned by seamen after their vessel had been wrecked, but before she was finally abandoned, did not constitute antecedent wages in a sense which would postpone them to the claims of the salvors, and that the proceeds derived from the sale of the outfit of the vessel must first be applied to the payment of the demands of such seamen.

In admiralty.

The facts of this case, as shown by the pleadings, were these: On the fifteenth day of October, 1879, the schooner Davidson left Chicago on a voyage to northern ports on Lake Michigan. Libellants shipped on board as seamen. On the next day the vessel was stranded on Pilot Island Reef. On request for assistance from the master, Wolf & Davidson, of Milwaukee, dispatched the tug Leviathan, with steam-pump and other apparatus, to the relief of the vessel. Efforts were made to get the vessel off, and were continued until November 26th, but they were unsuccessful. From the time the vessel was stranded until exertions to relieve her were abandoned libellants continued on board. On the twenty-fifth day of November, the master of the tug being convinced that the vessel could not be relieved, deemed it advisable to save her outfit, consisting of boats, tackle, rigging, apparel and furniture, and ceased his efforts in behalf of the vessel. Thereupon the master and crew of the tug, with the assistance of the crew of the vessel, removed the vessel's outfit to the tug, and brought it, together with the master and crew of the vessel, to the port of Milwaukee. Libellants were then discharged, but were not paid their wages, and thereupon libelled the outfit. Decree was rendered in their favor, the outfit sold, and the proceeds were paid into the registry of the court. Thereupon the owners of the tug intervened, by petition as salvors, insisting that their claim for salvage service was privileged to that of the seamen, and asked for payment as having the prior right to the

proceeds of sale; and the question was whether, under such a state of facts, the wages of the seamen, or the claim for salvage service, was to be first paid.

Mr. Markham, for the seamen, cited *Pitman* v. *Hooper*, 3 Sumner, 50; *The Massasoit*, 1 Sprague, 97; *The Isabella*, Brown's Adm'y Rep. 96–103; *The Sailor Prince*, 1 Benedict, 234; *The Steamboat Pilot No. 2*, 1 Newberry, 215–217; *Smith* v. *Stewart*, Crabbe's Rep. 218; *Lewis* v. *The Elizabeth & Jane*, 1 Ware, 35.

Mr. Krause, for salvors, cited *The Salina*, 2 notes of case 18, 16 Monthly Law Reporter, 5; *Reed* v. *Hussey*, 1 Blatch. & How. 527; *Collins* v. *Steamboat Fort Wayne*, 1 Bond, 484.

DYER, J., held that the seamen were not discharged from the obligation of their contract of service by the happening of disaster to the vessel; that it was their duty, so long as their personal safety permitted, to remain by the wreck and to save as much as possible; and that upon compliance with this obligation the fragments of the vessel constituted a fund pledged for payment of their wages; that upon abandonment by them of the wreck the contract between them and the owner of the vessel would be dissolved, and that they would then lose their privilege against the vessel and their claim for wages; that as libellants remained by the wreck and did not abandon it until the outfit was removed, their right to wages and their lien continued in force; that under the circumstances of the case the wages which were earned while they remained on board, and until the vessel was finally abandoned, did not constitute antecedent wages in a sense which would postpone them to the claim of the salvors; and that the proceeds of the outfit must be first applied to the payment of their demands, although it would have been otherwise had they abandoned the wreck before the salvage service was begun.

SEARCY & SCHUSTER v. MCCHORD, Assignee, etc.

(*District Court, D. Kentucky.* March 4, 1880.)

SALE—MISTAKE—ASSIGNEE IN BANKRUPTCY.—A court of equity will set aside a sale by an assignee in bankruptcy where the purchaser has been innocently misled by the advertised notice of the sale.

In equity. Bill and cross-bill for specific performance. The bankrupt, Hardesty, was the owner of 180¼ acres of land in Washington county. Under an execution issued on a replevin bond the whole tract was, prior to the commencement of bankruptcy proceedings, sold for less than two-thirds of its appraised value to a man by the name of Hardin. Before the expiration of the year which Hardesty had for redemption he became a bankrupt, and defendant, McChord, was chosen assignee. McChord thereupon advertised, by printed hand-bills, that on a certain day he would sell at public auction "the right of redemption of said Hardesty in 180¼ acres of land, upon which said Hardesty now lives, situated in Washington county, etc. Said farm is in a high state of cultivation, and there is a good frame house and all necessary out-buildings thereon. Terms of sale: The right of redemption in the land, and the store-house, will be sold on a credit of three months, with interest from date, etc."

At the time and place mentioned in the advertisement he put the property up at public auction, and struck it off to the complainants at $1,270. Complainants thereupon gave the assignee a note for this amount, and paid to Hardin, the purchaser at the execution sale, the amount paid by him at such sale, and 10 per cent. interest, amounting to $880. At the maturity of their sale bond the assignee insisted that the complainants were bound to take the property at $1,270, subject not only to the lien of Hardin, the purchaser at the execution sale, but also to the homestead right claimed by the bankrupt and his wife, and that they had no right to have this homestead right satisfied out of the proceeds of the sale.

The prayer of the bill is either for a specific performance—that is, a conveyance from the assignee free from the homestead, in case Hardesty and wife could be induced to make a