

In admiralty. Appeal from the district court

B. H. Kern, for libellants.

W. F. Smith, for appellant.

McCCRARY, J. The steamboat "H. C. Yaeger" left the port of St. Louis about the twenty-fourth of November, 1878, bound upon a voyage down the Mississippi river to New Orleans. On the way she grounded at a place called Kas-kaskia Bend, about 65 or 70 miles below St. Louis. After making unsuccessful efforts to free his vessel from the bar on which she was fast, the master engaged the services of the tug-boat "Wild Boy," then in the neighborhood, and owned by the libellants, though chartered to Burgess & Co., on terms to be hereafter stated. The tug, with a small crew, went to the relief of the "Yaeger," taking a barge along-side, into which a portion of the cargo was placed, and after some hours' labor the vessel was pried from the bar on which she was grounded and enabled to proceed upon her voyage. The officers of the two vessels could not agree as to the price to be paid for these services, and hence this suit. There was judgment below for \$350 and the claimants appeal. Upon due consideration I have reached the following conclusions:

1. That under the circumstances the steamboat "Yaeger" is not to be regarded as having been in her home port at the time the services were rendered. She was not in port, but launched and afloat, proceeding on her voyage, and, therefore, clearly within the admiralty jurisdiction, whether within or without the territorial limits of the state of Missouri.

2. The fact that the services were rendered at the request of the master, and for the purpose of relieving the vessel from her stranded condition, raises a strong presumption that they were properly rendered on the credit of the vessel, and were necessary; and the claimants, in order to overcome this presumption, must show affirmatively that the credit was given exclusively to the owners. This they have not done.

3. At the time the service was rendered the tow-boat "Wild Boy" was in the possession of Burgess & Co., who had chartered it. These charterers were to pay the owners \$20 per day, and one-half of what was earned by the boat in such

service as that now in controversy. The libellants, therefore, who are the owners of the "Wild Boy," were the owners of one-half the claim originally, and, having obtained the other half by assignment, my opinion is that they are entitled to sue for the whole.

4. Whether the service was in the nature of salvage or not, makes no difference as to the right of libellants to a lien. If, however, this were a case of salvage, they might recover extra compensation. In my opinion the circumstances were not so extraordinary, nor the peril sufficiently great, to justify an extra allowance, on the theory that the services were in the nature of salvage. I am strengthened in this view by the fact, which appears in evidence, that the bill, as at first presented by the master of the "Wild Boy," was for \$175—only the evidence is very conflicting as to what would have been a reasonable compensation, as it is also upon the question whether there was a contract to render the service at \$7 per hour; but, inasmuch as the sum of \$175 was originally fixed by the master of the tug, who was the person who made the contract and rendered the service, and, inasmuch as that is about the sum that is established by the weight of the evidence, I have adopted it as the amount of the libellants' recovery.

The decree below is modified accordingly, and the vessel is charged with a lien for \$175, with interest and costs.

IN THE MATTER OF WALRUP, Bankrupt.

(Circuit Court, E. D. Missouri. March 20, 1880.)

SALE—FALSE PRETENCES—RATIFICATION.—The refusal of a vendor to take back goods obtained by false pretences, in order to obtain a preference over other creditors, amounts to a ratification of the sale.

In bankruptcy. Appeal from district court.

Jacob Klein, for assignee.

Patrick & Frank, for petitioners.

MCCRARY, J. This is a petition filed by J. Weil & Bro. praying an order against the assignee of John Walrup, bankrupt, directing him to return to petitioners certain dry goods sold and delivered by them to the bankrupt prior to the commencement of the bankruptcy proceedings. This order is asked upon the ground that the goods in question were obtained by the bankrupt from the petitioners by means of false representations as to his financial condition. There is some doubt upon the question whether the proof shows that the bankrupt obtained the goods, not intending to pay for them, and this, according to the ruling of the supreme court in *Donaldson, Assignee, v. Farwell*, 93 U. S. 631, must appear. It is not, however, necessary to go into the proof upon that question, for the case may well be determined upon another point. It is very clear that the vendor, who has been induced by fraudulent and false representations to part with the goods, must, upon discovering the fraud, promptly disaffirm the contract in order to be entitled to a return of the property. In this case it appears, from the report of the register, that the petitioners not only did not comply with this requirement of the law, but that they failed to take back the goods when the bankrupt offered to return them. The register, in his report, says:

"The facts appear to be that on receiving notice from the debtor of the proposed meeting of creditors for the purpose of securing an extension, as heretofore stated, one of the members of petitioners' firm called in person upon the debtor, *who then made a proposal to return the goods*, they then being, as now, in unbroken packages; and after some parley between the parties no final action was taken."

The character of this parley we may gather from the further facts stated by the register, that "there is some evidence tending to show that at the time of this interview the petitioners endeavored to secure from the debtor some arrangement by which their claim would be protected," etc. I have no doubt that an attempt to secure the debt, or to obtain a preference, after knowledge of the fraud, would amount to an affirmation of the sale, even if not accompanied by a refusal