

The libellant avers that credit was given to the vessel. The libellant, though examined as a witness, did not testify upon whose or what credit he relied. Under the circumstances, I think that the evidence shows that he did not rely upon the credit of the vessel, and that he has no lien on her. It is unnecessary, therefore, to consider the other questions that have been raised.

Libel dismissed, with costs.

WHITE and others *v.* THE STEAMER CYNTHIA

(District Court, E. D. New York. April 15, 1880.)

ADMIRALTY—LIEN OF MATERIAL-MEN BY STATE LAW.—W. & Co., machinists and steam-fitters, did work upon a steamboat in Norfolk, Va., to the amount of \$117. The boat was afterwards, and without payment of this bill, sold to parties in New York; whereupon W. & Co. filed a libel against her in the eastern district of New York for their bill.

Held, that they were material-men, whose claim was a lien upon the vessel by the laws of the state of Virginia, and that such a lien is enforceable in admiralty in the state of New York.

Birdseye, Cloyes & Bayliss, for libellants.

Beebe, Wilcox & Hobbs, for defendant.

BENEDICT, D. J. The materials sued for do not, in my opinion, come within the rule that has been applied to cases of building a vessel. The relation of the libellants was not that of builders, but of material-men. As such they acquired a lien upon the vessel for the value of the articles sued for, by virtue of the law of the state of Virginia, where the vessel then belonged, and where the contract was made. *The Steamer Raleigh*, 2 Hughes, 44. That lien, unless it has been lost by laches or waiver, may be enforced by this court. Neither laches nor waiver has been proved. The libellants are, therefore, entitled to a decree for the amount of their bill, with interest and costs.

THE MISSOURI VALLEY LIFE INSURANCE COMPANY v. KITTLE
and others.

(Circuit Court, D. Nebraska. May, 1880.

USURY—QUESTION OF FACT.—Any agreement, device or shift to reserve or take more than the law permits for use of money loaned is usury, and whether by such means more than the legal rate of interest has been contracted for is a question of fact to be collected from the whole of the transaction as it passed between the parties.

SAME—AGREEMENT FOR INSURANCE IN LENDER'S COMPANY.—A transaction whereby a party, in order to secure a loan of money, contracts to pay 12 per cent. per annum interest, the maximum rate allowed by law, and also as a part of the same transaction, and in consideration of such loan, agrees to take from the party loaning the money a policy of insurance, and to pay premiums thereon, is usurious under the statute of Nebraska.

SAME—PAYMENT OF INSURANCE PREMIUMS.—Payments made in such a case, under the name of premiums on the insurance policy, must be regarded as paid on the loan; the insurance contract, made as it was to cover usury, being held void.

J. M. Woolworth, for plaintiff.

E. Wakely, for defendant.

McCABRY, C. J. Bill in equity brought to foreclose a mortgage upon certain real estate in Nebraska, executed by Robert Kittle and wife to the plaintiff, to secure the payment of a certain promissory note for \$2,500.

The defence is that the note sued on is usurious. The legal rate of interest under the law of Nebraska is 12 per cent. per annum, and this rate is contracted for by the terms of the note. It is claimed by the defendants that, in addition to the lawful interest thus provided for, a further consideration for the loan was exacted by the plaintiff under the cover of a transaction of insurance entered into between the plaintiff and defendant Robert Kittle. The plaintiff is a corporation organized under the laws of Kansas, and its purposes are declared by article 4 of its charter, among other things, to be "to make insurance upon the lives of individuals, * * * and to make such legal investments of all moneys received as premiums for policies issued and from

v.2,no.2—8