

MUNTZ and others v. A RAFT OF TIMBER.*

(Circuit Court, E. D. Louisiana. January, 1883.)

JURISDICTION—RAFT—SALVAGE.

In a case where a raft is adrift in a fog on the Mississippi river, in peril of loss and great damage to itself and to other property, where the persons on the raft in charge called for assistance, and services of a maritime character were rendered, and the court entertained and maintained jurisdiction of a libel for salvage, its decision need not be taken as holding that a raft is a vehicle of navigation, or can commit a maritime tort.

Tome v. Four Cribs Lumber, Taney, 536, distinguished.

In Admiralty. On petition for a rehearing.

R. King Cutler, for libelant.

E. Warren, for claimants.

PARDEE, J. A rehearing is applied for on the authority of *Gastrel v. Cypress Raft*, 2 Woods, 213; *Jones v. Coal Barges*, 3 Wall. Jr. 53; *Tome v. Four Cribs Lumber*, Taney, 536. The case in Woods' Reports was a claim made for the ownership of logs cut by trespassers on lands in Mississippi, and incorporated with other logs in the raft in controversy. The case in Wallace, Jr. was one of collision between two barges. Neither of these cases touches the question before the court. The case in Taney, while it may declare the doctrine claimed by claimants' proctor, in this case, seems to have been decided more upon the merits than upon the jurisdiction of the court. The court says, however:

"The result of this opinion is that rafts, anchored in the stream, although it may be a public navigable river, are not the subject-matter of admiralty jurisdiction in cases where the right of property or possession is alone concerned."

It is not necessary to dispute this conclusion or any other in the Taney case, in order to maintain jurisdiction in this case. Instead of a raft anchored, or one afloat, according to the usage of the trade, this case showed a raft adrift in a fog, in peril of loss and great damage to itself and to other property, where the persons on the raft and in charge called for assistance, and services of a maritime character were rendered. The decision in this case need not be taken as holding that a raft is a vehicle of navigation, or can commit a maritime tort, or as being subject to any other obligations and responsibilities than a bale of cotton would be subject to under the same circumstances.

The petition for rehearing is refused.

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

THE J. C. WILLIAMS.

(District Court, S. D. New York. January, 1883.)

1. VESSEL—SHIP'S HUSBAND—LIEN FOR ADVANCES—SUBROGATION.

Although, ordinarily, the general agent of a ship, or the ship's husband, has no maritime lien for advances made in the usual course of his employment about the business of the ship, because made presumably on the credit of the owners, yet when the circumstances show that his agency was an attendant upon his situation as mortgagee of the vessel, and for the purpose of further security, his advances in the management of the ship's business should be held to be made, not upon the personal credit of the mortgagor, but upon the credit of the vessel, and for the protection of his mortgage; and a maritime lien should, therefore, be sustained in his favor for such necessary payments and supplies as would be liens in favor of other persons, and he should be deemed equitably subrogated to the liens paid by him.

2. SAME—NO LIEN FOR COMMISSIONS.

The agent's own commissions for advances and for obtaining freights should not, however, be allowed as liens.

In Admiralty.

W. R. Beebe, proctor for libelant.

John B. Whiting, proctor for claimant.

BROWN, J. This cause, having been tried before a commissioner to whom it was referred, comes before me upon exceptions to his report in favor of the libelants for the sum of \$4,150.10. The libelant is the receiver of Brett, Son & Co., who, in March, 1875, took a mortgage upon five-eighths of the bark, to secure \$10,000 from John C. Williams, to whom they advanced that money to aid in the construction of the vessel. The bark was built at Shelbourne, Nova Scotia, and was a British vessel. At the time of the advances it was agreed that Brett, Son & Co., for their security, should have this mortgage, and also be the agents of the ship in New York.

The libel was filed in October, 1882, to recover a balance due to Brett, Son & Co. for various advances and payments on account of the ship from February 24 to May 31, 1882; and a supplementary libel was afterwards filed for additional charges and payments.

During several years after the bark was finished, Williams was in charge of her navigation as master and as owner of five-eighths, Brett, Son & Co. being her general agents in New York. Prior to the charges for which the libel is brought, however, Williams had left the vessel, and was succeeded by the first mate, Smith, as master, who is not a part owner; and the business of the bark remained under the management of Brett, Son & Co., as before. So far as appears from