

not misled by any act or representation of the libelants. If they had made the advance upon the faith of the receipted bill, the libelants would be estopped.

The decree of the district court is reversed, and a decree ordered for the libelants for \$1,472.50, with interest from November 24, 1884, with costs of the district court, and of this court.

THE HELEN BROWN.¹

(District Court, D. Massachusetts. June 23, 1886.)

MARITIME LIEN—LIENS FOR REPAIRS—STATE STATUTES—PUB. ST. MASS. CH. 192, § 14 SEC. 15.

To "depart from port" means to go to sea, irrespective of the distance or duration of the voyage, under Pub. St. Mass. c. 192, §§ 14, 15.

The libelants claimed a lien under Pub. St. Mass. c. 192, §§ 14, 15. The claimants, the mortgagees, defended on the ground that the provisions of the act had not been complied with. It was admitted that no claim had been filed until more than four days after a trip to Lynn; but it was asserted that a trip to Lynn and return, completed on the same day, was not a departure from the port, within the meaning of the act.

Horace G. Allen, for libelants.

C. T. Russell, Jr., for claimants.

NELSON, J. This is a libel by material-men to enforce a lien for labor and materials furnished in repairing the steam-tug *Helen Brown*, at Boston, her home port. The lien is claimed under a statute of the state which gives a lien for labor performed and materials furnished in the repairs of a domestic vessel. Pub. St. c. 192, § 14. Section 15 provides that "such lien shall be dissolved unless the person claiming the same files, within four days from the time when the vessel departs from the port at which she was when the debt was contracted, in the office of the clerk of the city or town within which the vessel was at such time," a statement giving a just and true account of the demand claimed to be due to him. The *Helen Brown* was an ordinary tug-boat, engaged in the usual business of boats of her class. After the libelants' debt was contracted, she towed a vessel from Boston to Lynn, and on several other occasions she went to Lynn, and was there engaged in towing vessels; but in each instance she returned to Boston the same day after the service was rendered. It was admitted that no statement of the libelants' demand was filed, as required by section 15, until more than four days after the last of her

¹ Reported by Theodore M. Etting, Esq., of the Philadelphia bar.

trips to Lynn; and if going to Lynn was a departure from the port at which she was when the debt was contracted, within the meaning of section 15, the libelants' original lien was dissolved as against the claimants, who were mortgagees of the vessel. The case turns on the meaning of the words "depart from the port," as used in that section. A vessel departs from her port when she goes to sea. When she leaves her harbor, and enters upon the high seas, whether on a voyage to another port, or in the prosecution of some business on the ocean, such as towing, fishing, rendering assistance, or the like, she is, in a legal as well as in a nautical sense, at sea, as distinguished from being in port. To "depart from port," to "leave port," to "go to sea," are phrases which, in popular speech, have the same signification. I am of opinion that it is in this sense that the words "depart from the port" are used in this statute. *U. S. v. Grush*, 5 Mason, 290; *The Harriet*, 1 Story, 251. In going to Lynn the Helen Brown went outside of the headlands and lighthouses which mark the outward geographical limits of Boston harbor, and entered Massachusetts bay. She was then upon the high seas; she had left her port and had gone to sea. Whether her departure was for a longer or shorter voyage, or with the intention of returning sooner or later, can make no difference. She went, not secretly, or for the purpose of avoiding the lien, but openly, and in the line of her regular employment.

Reference was made to chapter 70, § 7, Pub. St., which, for pilotage purposes, defined the harbor of Boston to include all the waters within Nahant rock, on the north, and Point Alderton, on the south, Lynn being within those limits. But it is apparent that this is an arbitrary line, established for pilotage purposes only, and can have no application in cases arising under chapter 192.

Libel dismissed, with costs.

ATTLEBOROUGH NAT. BANK v. NORTHWESTERN MANUF'G & CAR Co.
and others.

(Circuit Court, D. Minnesota. July, 1886.)

COURTS—CONFLICT OF JURISDICTION—RES IN CUSTODIA LEGIS—CONSPIRACY.

Where a court of competent jurisdiction has possession of the *res*, the United States circuit court will not interfere with such possession on the ground that the court was imposed upon by a conspiracy, and the possession of the *res* obtained by fraud.

Demurrer to Bill of Complaint.

P. M. Babcock, for complainant.

J. N. Castle, Searles, Ewing & Gail, and *Bigelow, Flandrau & Squires*, for defendants.

NELSON, J. The facts are briefly these: The Northwestern Manufacturing & Car Company, a corporation existing under the laws of the state of Minnesota, is in the hands of a receiver, under an order of the district court of Washington county, with a view of winding up the concern, and all its property is sequestered. That court has possession, and is proceeding to ascertain the debts, and liquidate. The complainant, a citizen of Massachusetts, is a creditor of the car company, and has a judgment obtained in an action at law in the circuit court of the United States for the district of Minnesota, pending these proceedings. While a distribution of the property by the district court of the state is progressing, a bill in equity is filed, and this court is asked to set aside all the proceedings by which that court gained possession of the *res*. There is no complaint that the state court refused to recognize the debt of the complainant. The allegation to give this court jurisdiction is that a fraudulent conspiracy existed between the car company and a creditor, by which the state court was imposed upon, and possession of the *res* acquired by this fraud. To entertain this suit not only involves a review of the judgment of the district court of the state, but is a direct interference with property *in custodia legis*, by authority of a court having jurisdiction over the parties thereto and the subject-matter of the controversy. Such interference cannot be tolerated. After a court of competent jurisdiction, having possession of the *res*, has let go its hold, a suit could be brought in another court of concurrent jurisdiction, in which it might be the duty of the court, if fraud was alleged and proven in obtaining a decree, to prevent the parties who obtained it, and who are before the court, and claim the property by virtue of a sale with knowledge of the fraud, from appropriating the property. *Sahlgard v. Kennedy*, 2 Fed. Rep. 295, cited by complainant's counsel, and decided in this court, was of that character; also *Johnson v. Waters*, 111 U. S. 640; S. C. 4 Sup. Ct. Rep. 619. In *Barrow v. Hunton*, 99 U. S. 80, jurisdiction was sustained