

But this vessel is a British vessel, and subject to British law. Under the circumstances, it is the duty of the court to administer and apply the British law exactly as it would be applied if the vessel were in an English court. The court, under the decision in *The Riga*, L. R. 3 Adm. & Ecc. 516, must hold that insurance, expressly authorized by the owners, is a "necessary," within the English act defining the jurisdiction of the admiralty court, and that, under that act, it created a maritime lien upon the vessel. The claim for payment for the spars used in the original construction of the vessel must also be allowed, because the English admiralty would allow it as a lien upon the vessel. The act of 24 & 25 Vict. c. 10, merely restores to the English admiralty the general admiralty and maritime jurisdiction of which the common-law courts had deprived it. While the United States supreme court has held that under the admiralty jurisdiction in this country there is no lien for materials furnished in the construction of a vessel, yet the general maritime law of the world gives such a lien, and the jurisdiction to enforce it has been restored to the English admiralty. As the lien would be recognized and enforced against this vessel in an English court, it can, as between the parties here, be enforced in this court. A decree will therefore be entered for the whole amount of libellant's claim, with interest and costs.

THE MERRIMAC.¹

(District Court, D. Massachusetts. November 20, 1886.)

MARITIME LIENS—SEIZURE OF SEINE-BOAT AS APPURTENANT TO MACKEREL SCHOONER—USAGE—OBLIGATION TO TAKE NOTICE OF.

The seine-boat which always accompanies schooners engaged in the mackerel trade sometimes belongs to the owners of the vessel, but quite as frequently to others. In the latter event, it is sometimes hired by the crew or owners, from outside parties, for the season or trip. It draws a regular share in the catch, which goes to whomsoever furnishes it. When the boat and the vessel have a common ownership, the former, by usage, passes to the buyer of the latter, though it be not mentioned in the bill of sale. But it is only in the event of common ownership that the former is regarded as appurtenant to the latter. *Held* that, if the common ownership be divested by a sale, the subsequent hiring of the boat by the seller cannot serve to make the boat a part of the vessel, and liable to an attachment for the vessel's debts; that the new relation was in accordance with a usage of which the parties furnishing supplies were bound to take notice.

In Admiralty. Action *in rem*. Seizure of seine-boat of mackerel schooner at the instance of material-men, the furnishers of supplies to the schooner.

Libels by T. L. Mayo & Co. and James P. Nye for repairs and supplies furnished the mackerel schooner Merrimac. A large seine-

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

boat, 37 feet long and 7½ feet wide, was seized by the marshal as belonging to the schooner. Noah Mayo appeared by petition as claimant of the seine-boat, alleging that it was not appurtenant to the schooner, and not subject to the lien of the libelants. The only question in the case was whether the seine-boat was appurtenant to the schooner.

J. C. Dodge & Sons, for intervenors.

Frederick Cunningham, for libelants.

Noah Mayo, for seine-boat.

NELSON, J. This case was heard on the petition of Noah Mayo for the release from arrestment of a seine-boat seized by the marshal on a warrant of arrest, in a suit by material-men against the mackerel schooner *Merrimac*, her tackle, apparel, and furniture. The libelants claim to hold the boat under the seizure as appurtenant to the vessel, and as subject to their lien for the supplies furnished. A seine-boat, such as the one in question, always accompanies a vessel when engaged in the mackerel fishery, and is indispensable for the prosecution of the business. As it is too large to be hoisted and carried on deck, it is usually towed astern of the vessel in proceeding to and from the fishing grounds, and is there used in carrying out and setting the seine. It sometimes belongs to the owner of the vessel, but is quite as frequently owned by the crew, or is hired for the season or trip from outside parties. It draws a regular share in the catch,—usually a sixth or seventh after the great general bill,—and this share goes to the parties furnishing the boat. If the boat belongs to the owner, it is considered as attached to the vessel, and passes by usage in a sale of the vessel, though not mentioned in the bill of sale. But it is regarded as appurtenant to the vessel only when it belongs to the owner of the vessel, and is used in connection with it in the manner stated.

Such being the usage proved as to boats of this class, the libelants' lien never could have attached to this boat. When the supplies were furnished, the boat had become the property of the petitioner Mayo. It had previously belonged to the owner of the vessel, but had been purchased from him by Mayo. By the sale it was separated from the vessel, and was no longer attached or appurtenant to it. Its subsequent use by the vessel, in prosecuting its business, was under a contract of hiring, by which Mayo was to be paid for its service. This did not have the effect to annex it again,—to make it a part of the vessel. The libelants were bound by the usage to take notice of this new relation, and can therefore have no lien on the boat for the supplies. Petition allowed.

THE WATER WITCH'S CARGO.

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

SHIPS AND SHIPPING—DUTY OF MASTER NOT TO TAKE AVERAGE BOND AFTER ADJUSTMENT OF LOSS—FORM OF AVERAGE BOND.

The question whether tender of an average bond, reciting that the owners claim that certain losses and expenses had been incurred which might constitute a general average, is sufficient to entitle consignees to a delivery of the goods from the master, cannot be decided (there being no contention but that the losses and expenses made a case of general average) after the adjustment has been made, there being no obligation on the master then to accept any bond.

In Admiralty.

C. T. Russell, Jr., for libelants.

Paul West, for claimants.

NELSON, J. The brig Water Witch arrived in Boston on the thirteenth of December, 1885, from Baltimore, having on board a cargo of clay retorts, tiles, etc., consigned to the libelants, Waldo Bros., commission merchants, doing business at Boston. In the course of the voyage a general average loss occurred. On her arrival here the master offered to deliver possession of the cargo to the consignees, they paying the freight, upon their executing to him an average bond prepared by the adjuster employed by him to settle the loss, in which it was recited that in the due prosecution of the voyage certain losses and expenses had been incurred, and other expenses thereafter might be incurred, which, according to the usage of this port, constituted a general average to be apportioned on the vessel, her earnings as freight, and the cargo on board. The consignees declined to execute the bond, with the recital expressed in that form, upon the ground that by its terms they would be precluded from disputing the liability of the cargo for contribution; but, desiring to obtain possession of the cargo, they offered to give a bond in which the recital was that *the owners claimed* that certain losses and expenses had been incurred on the voyage, which *might* constitute a general average, etc., and they had prepared and tendered to the master a bond in that form, and demanded the cargo, offering to pay the freight. But the master refused to accept the bond, or to deliver the cargo, insisting on his adjuster's form of the instrument.

The principal question discussed was whether the master was bound to accept the bond tendered by the consignee, and upon the payment of the freight deliver the cargo; but, on the facts as they were developed at the hearing, this question does not fairly arise for the decision of the court. The brig arrived here on December 13th. The negotiations between the parties as to the form of the bond extended until December 28th, and on that day the consignees tendered their bond. But at that time the average adjustment had been completed,