

THE AUGUSTINE KOBBE.

REVERE COPPER Co. *et al.* v. THE AUGUSTINE KOBBE.

(District Court, S. D. Alabama. January 5, 1889.)

1. MARITIME LIENS—ADVANCES—BY CHARTERER AFTER SEIZURE.

A claim for a sum advanced by the charterers after a vessel has been seized, and while in the custody of the court, cannot be allowed as a lien on the vessel where the advancements are not necessary for the due care and preservation of the vessel, and the charterers have actual notice of the seizure.

2. SAME—SUBROGATION.

The charterers are, however, subrogated to the rights of the stevedore, to whom they paid the money, and thus have a statutory lien therefor, to be satisfied out of the remnants, if any.

In Admiralty. On claim for damages for breach of charter-party.

The damages allowed by the court after amendment of the libel were calculated on the difference in freight rates between the violated charter and the one made after the filing of the libel, but under which the cargo had actually to be shipped at an advance. For main case, and full statement of facts, see same case, *ante*, 696.

Pillans, Torrey & Hanaw, for charterers Martin, Taylor & Co.
Hamiltons & Gaillard and others for sundry creditors, *contra*.

TOULMIN, J. A plaintiff cannot recover as principal a sum larger than he demands by his declaration, but interest may be added if the *ad damnum* be sufficient to cover it.

I have disallowed as damages under the breach of the Kobbe charter the item of \$343, advanced by libelants as charterers, and claimed as a part of such damages, because the same was advanced after the seizure of the vessel. From the evidence it appears that this claim arose while the vessel was in the custody of the court, and, as it was not necessary for the due care and preservation of the vessel, it cannot be recognized as a lien. *The Young America*, 30 Fed. Rep. 790. After the seizure the contemplated voyage was broken up and abandoned. There was then a breach of the charter-party. After such breach Martin, Taylor & Co. had no right to increase their damages; and ought not to have increased them, (as a matter of justice,) by making further advances, and I do not think their doing so can be recognized as a lien on the vessel. I think the principle laid down in the case of *The Young America*, 30 Fed. Rep. 790, and of the *Esteban de Antumano*, 31 Fed. Rep. 921, is a just one, and should be applied in this case to the item of \$343, claimed as a part of the damages sued for. That principle, as applied here, is that when the marshal seized and took into his possession, under process from this court, the vessel, she went into the custody of the law, and her contemplated voyage was broken up and abandoned, and thereby the authority of her owners and of their agent, the master, to thereafter affect the ship by any contract or conduct to

result in a lien on the ship, was ended. By the seizure all persons were notified of the change of control and possession. The proof shows that Martin, Taylor & Co. were actually notified. While the vessel was in the custody of the law it is doubtful whether on any account or for any service (except, perhaps, salvage or collision) any lien could arise on the vessel. I think, however, that Martin, Taylor & Co. are subrogated to the rights of the stevedore to whom they paid the money, and that they have a statutory lien therefor to be satisfied out of the remnants, if any.

WHITE v. THE EMMA.

(Circuit Court, E. D. Louisiana. January, 1889.)

MARITIME LIENS—SERVICES.

Libelant was employed by the owner of a boat to run it for her. He did not act in any particular capacity, but performed all kinds of services, sometimes hunting up business for the owner, and doing work not connected with the management of the boat. There was no contract as to how much he should be paid for his services. *Held*, that he did not have a lien on the boat for such services, as it was evident that he relied upon the credit of the owner for his pay.

In Admiralty. On appeal from district court.

T. M. Gill, for libelant.

Miller & Finney, for claimants.

PARDEE, J. Libel *in rem* for services as pilot and general mariner on board the tug Emma from on or about December 25, 1886, to on or about November 15, 1887. The steam-tug Emma is a vessel of three and three-quarter tons. The libelant's testimony is substantially as follows:

"I am a steam-boat man,—a pilot and carpenter. On the 25th of December, 1886, I was employed by Miss Theresa Mooney to go to the mouth of Little river, near the mouth of Black river, to recover the steam-tug Emma. I was to go and get it, overhaul it, repair it, and run it for her. I went up to make arrangements to buy her, and that night, when I was there, and made arrangements to buy her, she thawed out, her water-pipe burst, and she sank,—that was after I had made arrangements to buy her at a certain price, she sank,—and we had to haul her up on the bank. I did it with what assistance I could get there. After raising her, I found the rudder was broken. After getting up steam and repairing her, I had to overhaul her machinery. I did it with the assistance of a blacksmith. I then brought her over here at Free-town, in the port of New Orleans, just across the river. There we hauled her on the ways, and I helped to overhaul the engines. The painting I did all myself. After getting through with that, I took her to Bayou Sara, and I done very well. I was there one week, and I cleared sixty-five dollars, or something in that neighborhood. On the Sunday night after that she took fire, after I had been there a week; and through some of my friends, four or five of them, (it was late at night,) and myself, we saved the hull. The next