

4,885 Bags of Linseed

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Court : US Supreme Court

Decided On : 1861

Appeal No. : 66 U.S. 108

Appellant : 4,885 Bags of Linseed

Judgement :

4,885 Bags of Linseed - 66 U.S. 108 (1861)

U.S. Supreme Court 4,885 Bags of Linseed, 66 U.S. 1 Black 108 108 (1861)

4,885 Bags of Linseed

66 U.S. (1 Black) 108

APPEAL FROM THE DECREE OF THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

1. A vessel was chartered for a voyage from Boston to Calcutta and back, and the agents of the charterers at Calcutta subchartered her to other persons there, who loaded her with goods consigned to parties in Boston, under special bills of lading, which did not refer to the original charter party. *Held* that the rights of the shipowners to the freight, payable by the consignees, and their lien for it upon the

goods depended entirely on the contract expressed in the bills of lading, and not upon anything contained in the charter party.

2. The lien of a shipowner for freight being but a right to retain the goods until payment of the freight, is inseparably associated with the possession of the goods, and is lost by an unconditional delivery to the consignee.

3. But if the cargo is placed in the hands of the consignee, with an understanding that the lien for freight is to continue, a court of admiralty will regard the transaction as a deposit of the goods in the ware house, and not as an absolute delivery, and on that ground will consider the shipowner as being still constructively in possession so far as to preserve his lien.

4. That such an understanding did exist between the parties must appear in the evidence, or be plainly inferable from the established local usage of the port, otherwise there is no possession, actual or constructive, to support the lien.

The libel in this case was filed in the district court by Paul Sears, Reuben Hopkins, James Smith, Alexander Child, William N. Batson, and Rowland H. Crosby, owners of the ship *Bold Hunter*, against four thousand eight hundred and eighty-five bags of linseed, seven thousand pockets of linseed, and fifteen hundred and thirty bags of pague cutch. The goods libeled were part of a larger quantity brought to Boston from Calcutta by the *Bold Hunter* for Augustine Wills, and were at the time in store. The libellants demanded \$14,948.57 as freight, less \$5,000, which had been paid on account, and for

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this balance of freight they insisted that their lien had not been waived or impaired by the delivery of the goods under the circumstances.

After warrant and monition were issued, and the goods seized by the marshal in pursuance thereof, Rufus Wills, administrator of Augustine Wills, deceased, came in as claimant, and made answer to the libel, denying that the libellants had any lien on the goods for the freight.

The parties did not dispute about the facts of the case. It appeared by their mutual admissions that the libellants were owners of the *Bold Hunter*, and in October, 1856, chartered her to Tuckerman, Townsend & Co. for a voyage from Calcutta to Boston at \$15 per ton on whole packages and half that rate on loose stowage. The charter party contained the usual lien clause, with a stipulation that the freight should be paid in five and ten days after discharge at Boston, the credit not to impair the shipowner's lien for freight. On the ship's arrival at Calcutta, the charterers did not furnish an entire cargo, and procured some shipments on freights -- among others, one to Augustine Wills -- for which the master signed bills of lading, in the usual form, at various rates of freight, all less than the charter rates. These bills of lading were passed over to the libellants by Tuckerman, Townsend & Co. in part settlement of the charter money, and the libellants undertook to collect the freights. The ship arrived at Boston in October, 1857. The larger portion of the goods consigned to Wills were discharged by the consent of all parties, without being landed, into the ship *Cyclone*, bound to London, and the remainder were delivered to the claimant, who took them to the custom house stores, and entered them in bond in the name of Augustine Wills. When the *Bold Hunter* arrived, Augustine Wills, the consignee, was sick, and he died before the goods were all discharged. Rufus Wills, the claimant, acted as his agent before his death, and was his administrator afterwards. The goods were discharged and delivered without qualification, and nothing was said about holding them or any part of them for freight. The claimant, before the death of the consignee, paid \$5,000 on the freights, but afterwards declined to pay any

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more, saying that he did not know how the estate of Augustine Wills would turn out.

The district court dismissed the libel, and the decree was afterwards affirmed by the circuit court. Whereupon the libellant took this appeal to the Supreme Court of the United States.

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MR. CHIEF JUSTICE TANEY.

The rights of the parties in this case depend altogether on the contract created by the bill of lading. That instrument does not refer to the charter party, nor can the charter party influence in any degree the decision of the question before us. Augustine Wills was not a party to it, and it is not material to inquire whether he did or did not know of its existence and contents, for there is nothing in it to prevent Wills & Co., the subcharterers, or Augustine Wills, the consignee, from entering into the separate and distinct contract stated in the bill of lading, and the assignees took the rights of Wills & Co. in this contract, and nothing more. The circumstance that it came to hands of the shipowners by assignment from the subcharterers, who knew and were bound by all the stipulations of the charter party, cannot alter the construction of the bill of lading, nor affect the rights or obligations of Augustine Wills.

Undoubtedly the shipowner has a right to retain the goods until the freight is paid, and has, therefore, a lien upon them for the amount, and, as contracts of affreightment are regarded by the courts of the United States as maritime contracts, over which the courts of admiralty have jurisdiction, the shipowner may enforce his lien by a proceeding *in rem* in the proper court. But this lien is not in the nature of a hypothecation, which will remain a charge upon the goods after the shipowner has parted from the possession, but is analogous to the lien given by the common law to the carrier on land, who is not bound to deliver them to the party until his fare is paid,

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and if he delivers them, the encumbrances of the lien does not follow them in the hands of the owner or consignee. It is nothing more than the right to withhold the goods, and is inseparably associated with his possession, and dependent upon it.

The lien of the carrier by water for his freight, under the ordinary bill of lading, although it is maritime, yet it stands upon the same ground with the carrier by land, and arises from his right to retain the possession until the freight is paid, and is lost

by an unconditional delivery to the consignee. It is suggested in the argument for the appellant, that, as a general rule, maritime liens do not depend on possession of the thing upon which the lien exists; but this proposition cannot be maintained in the courts of admiralty of the United States. And, whatever may be the doctrine in the courts on the continent of Europe, where the civil law is established, it has been decided in this Court that the maritime lien for a general average in a case of jettison, and the lien for freight, depend upon the possession of the goods, and arise from the right to retain them until the amount of the lien is paid. [*Rae v. Cutler*](#), 7 How. 729; [*Dupont de Nemours & Co. v. Vance*](#), 19 How. 171

In the last mentioned case, the court, speaking of the lien for general average, and referring to the decision of *Rae v. Cutler* on that point, said:

"This admits the existence of a lien arising out of the admiralty law, but puts it on the same footing as a maritime lien on cargo for the price of its transportation, which, as is well known, is waived by an authorized delivery without insisting on payment."

After these two decisions, both of which were made upon much deliberation, the law upon this subject must be regarded as settled in the courts of the United States, and it is unnecessary to examine the various authorities which have been cited in the argument. But it may be proper to say, that while this Court has never regarded its admiralty authority as restricted to the subjects over which the English courts of admiralty exercised jurisdiction at the time our Constitution was adopted, yet it has never claimed the full extent of admiralty

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power which belongs to the courts organized under, and governed altogether by, the principles of the civil law.

But courts of admiralty, when carrying into execution maritime contracts and liens, are not governed by the strict and technical rules of the common law, and deal with them upon equitable principles, and with reference to the usages and necessities of trade. And it often happens that the necessities and usages of trade

require that the cargo should pass into the hands of the consignee before he pays the freight. It is the interest of the shipowner that his vessel should discharge her cargo as speedily as possible after her arrival at the port of delivery. And it would be a serious sacrifice of his interests if the ship was compelled, in order to preserve the lien, to remain day after day with her cargo on board, waiting until the consignee found it convenient to pay the freight, or until the lien could be enforced in a court of admiralty. The consignee, too, in many instances, might desire to see the cargo unladen before he paid the freight, in order to ascertain whether all of the goods mentioned in the bill of lading were on board, and not damaged by the fault of the ship. It is his duty, and not that of the shipowner, to provide a suitable and safe place on shore in which they may be stored; and several days are often consumed in unloading and storing the cargo of a large merchant vessel. And if the cargo cannot be unladen and placed in the warehouse of the consignee, without waiving the lien, it would seriously embarrass the ordinary operations and convenience of commerce, both as to the shipowner and the merchant.

It is true that such a delivery, without any condition or qualification annexed, would be a waiver of the lien, because, as we have already said, the lien is but an incident to the possession, with the right to retain. But in cases of the kind above mentioned it is frequently, perhaps more usually, understood between the parties, that transferring the goods from the ship to the warehouse shall not be regarded as a waiver of the lien, and that the shipowner reserves the right to proceed *in rem* to enforce it, if the freight is not paid. And if it appears by the evidence that such an understanding did exist between

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the parties, before or at the time the cargo was placed in the hands of the consignee, or if such an understanding is plainly to be inferred from the established local usage of the port, a court of admiralty will regard the transaction as a deposit of the goods, for the time, in the warehouse, and not as an absolute delivery, and on that ground will consider the shipowner as still constructively in possession, so far as to preserve his lien and his remedy *in rem*.

But in the case before us, there is nothing from which such an inference can be drawn. The goods were delivered, it is admitted, generally, and without any condition or qualification. Upon such a delivery there could be neither actual nor constructive possession remaining in the shipowner, and consequently there could be no right of retainer to support his lien.

The decree of the circuit court, dismissing the libel, must therefore be affirmed.

Decree affirmed.

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