THE LAW OF LIENS IN THE PHILIPPINE ISLANDS AS COMPARED WITH THAT PREVAILING IN THE UNITED STATES

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(Continued from October number.)

PARTNERSHIP

PARTNERSHIP LIENS

EXISTENCE OF A PARTNER'S LIEN ON THE EFFECTS OF PARTNERSHIP.

Under the American law, the partnership effects are *pledged* to each separate partner, until he is released from all his partnership obligations; but this lien, however, is solely under the control of the partners and it would follow doubtless, that if the partnership be dissolved, and the effects assigned to one partner, this pledge or lien is gone or lost. (Bardwell *vs.* Perry, 19 Vermont 292.) This lien is an equitable one existing by the very law of partnership. The partnership property belongs to the partnership, and not to the individuals of whom the partnership is composed. It is the right of each individual member of the partnership to require that the partnership property shall be applied to the payment of the partnership debts. The share of each member is his share of the surplus remaining after the settlement of all the firm's debts and accounts. (Jones on Liens, Sec. 787.)

The phrase "partner's lien" is unknown to the Spanish law, but its substance obtains in Spanish jurisprudence. Thus article 139 of the Code of Commerce provides that:

> "In general or limited copartnerships, no partner may remove or divert from the common funds a larger amount than that assigned to each for his personal expenses; should he do so, he may be compelled to repay it as if he had not completed the portion of the capital which he bound himself to contribute to the copartnership;" and according to article 170 of the same code an execution lies against the property of a partner to recover the portion of capital not contributed by such partner."

Article 235 of the Code of Commerce further provides:

> "No member can demand the delivery to him of the capital due from the common funds until all the debts and obligations of the association have been extinguished, or until the amount thereof has been deposited, if the delivery can not at once take place."

However, the strongest support for my contention is found in article 237 of the Code of Commerce, which is of the following tenor:

> "The private property of the general partners which is not included in the assets of the copartnership when it is established cannot be seized for the payment of the obligations contracted by the copartnership until after the common assets have been attached."

In other words, as long as there is property belonging to the company, obligations in favor of third persons are covered by the primary and direct responsibility of the company. When the assets of the company are exhausted then it becomes necessary to appeal to the ulterior or subsidiary liability of the private property of the partners. This notwithstanding the remarks made by our Supreme Court in the case of Compañía Marítima *vs.* Muñoz, 9 Phil. Rep. 338, which run as follows:

> "An action can be maintained against the partnership and the partners, but the judgment should recognize the rights of the individual partners which are secured by said article 237."

So that from a recital of the foregoing articles it is clear that the system of a partner's lien on the effects of the partnership until he is released from all his partnership obligations obtains as well in the Philippine Islands: for both under the American law (Jones on Liens, Sec. 787) and under our jurisprudence (Art. 237 of the Code of Commerce) it is the right of each individual member of the partnership to require that the partnership property shall be applied to the payment of the partnership debts.

INDIVIDUAL DEBT DUE FROM ONE PARTNER TO ANOTHER.

Under the American law, one partner has no lien on a copartner's interest in the partnership property for a debt due to him from the copartner. Thus in the case of Evans *vs.* Bryan, 95 N. C., 174, wherein the plaintiff's intestate, in contemplation of a business partnership between the intestate and the defendant, sold to the latter an undivided one-half interest in a business he had already established, taking his note for a part of the purchase money, the court said.

> "* * * the plaintiff is no more entitled to have the note in question paid out of the defendant's share of the assets of the partnership than if it had been given for a horse or other consideration in no way connected with the partnership property * * * the intestate had a specific lien on the property of the partnership, for its debts and liabilities due to other persons, for his share of its capital and funds; for all moneys advanced by him for its use, and for debts due it from the defendant, if there were such beyond his share, but he had no such lien for a debt due to him for property he sold to his copartner, in the absence of a special contract to that effect."

In the Philippine Islands, the same holding obtains, inasmuch as our Supreme Court in the case of Maximino Paterno *vs.* Gervasio Unson, R. G. No. 9450, has declared that "an action for money loaned in advance, by the plaintiff as partner to the concern which was managed by the defendant as an industrial partner, will not lie; and where no action can be maintained to enforce the lien, it is illusory to speak of the existence of a lien.

LIEN OF CREDITOR ON EFFECTS OF PARTNERSHIP.

The doctrine that firm assets must first be applied to the payment of firm debts, and individual property to individual debts, is only a principle of administration adopted by the courts where, from any cause, they are called upon to wind up the firm business and find that the members have made no valid disposition of or charges upon its assets. Thus: where, upon a dissolution of the firm, by death or limitation or bankruptcy or from any other cause, the courts are called upon to wind up the concern, they adopt and enforce the principle stated; but the principle ittself springs alone out of the obligation to do justice between the partners. (Schmidlapp *vs.* Currier, 55 Miss., 597.) *It is indispensable*, to the application of the above principle, that the partnership property should be within the control of the court and, in the course of administration, brought about by the bankruptcy of the firm or by an assignment, or by the creation of a trust in some mode. (Case *v.* Beauregard, 99 U. S., 119.)

This is because, in the United States, copartnership creditors have no specific lien, legal or equitable, upon the joint funds, no more than any individual creditor has a lien upon the private estate of his debtor. Even the partners themselves have no specific lien until the property has passed in *custodia legis*. While the partnership is going on the partners may convert joint into separate property, or separate into joint, and the property will, at the dissolution, be held to possess that character which is then impressed upon it. (Bisset on Partnership, 108, 111; Gow on Partnership, 296, Collyer on Partnership, 334, 511; Story on Partnership, 527; Kimball *vs.* Thompson, 13 Metc., 283.)

So that it has been shown that a creditor of a partnership, *under the American Law*, has no equitable lien upon its effects in the first instance to compel their application to the payment of partnership debts. The creditor does not acquire a lien upon the partnership property until he acquires it by legal process as by the levy of an attachment or of an execution.

Under the American law, equities of the creditors are derivative, that is, the rights and equities of the joint creditors are to be worked out only through the lien or equities of the partners. It operates when there is to be a settlement of a partnership concern, either by the partners themselves, or by a solvent partner, or a surviving one, or by an administrator, assignee, or receiver. (Allen *vs.* Genter Valley Co., 21 Conn., 138.)

All the preceding discussion is generally true as long as the transactions are carried on in good faith; that is, as long as the element of fraud is absent. But when the transactions have been brought about fraudulently, in contemplation of actual and open insolvency, and with a design to defeat the claims of creditors of the partnership, and with the knowledge and assent of the purchaser—it would be sustained by the general and conservative principle that the fraud of the parties will destroy

the legality of the sale. It is then, and not until then that the principle "that the copartnership property is a trust fund for the benefit of creditors, and as such the creditors have a quasi-lien on the said copartnership property" will be effective.

In the Philippine Islands, the same rule obtains as that prevailing in American jurisprudence for identical reasons laid down by the authorities, and for the further reason that there is nothing in our substantive law, either in the Code of Commerce or in the Civil Code, awarding creditors of a partnership a specific lien over the effects of the partnership for the payment of their credits. However, when the conveyances or transactions made by the partnership are tainted with fraud, then the equities of creditors in the form of a quasi-lien step in so far as to enable the latter to collect their credits.

In the consideration of whether or not certain transfers were fraudulent, courts have laid down certain rules by which the fraudulent character of the transaction may be determined. The following are some of the circumstances attending sales which have been denominated by the courts *badges of fraud:*

"1. The fact that the consideration of the conveyance is fictitious or is inadequate.
2. A transfer made by a debtor after suit has been begun and while it is pending against him.
3. A sale upon credit by an insolvent debtor.
4. Evidence of large indebtedness or complete insolvency.
5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.
6. The fact that the transfer is made between father and son, when there are present other of the above circumstances.
7. The failure of the vendee to take exclusive possession of all the property. (Oria *vs.* McMicking, 23 Phil. Rep., 250.)

The creditor may attack the sale by ignoring it and seizing under his execution the property, or any necessary portion thereof, which is the subject of the sale. (Oria *vs.* McMicking, 23 Phil. Rep., 252.)

In the case of Arbenz *v.* Gmur, 14 Official Gazette, 2046, Mr. Justice Trent, speaking for the court said:

> "Sprungli & Co. was purely a private partnership. * * * If it had been solvent, there would be no reason to disturb or question the transfer of the machine shops to Gmur. But the moment it became insolvent, the three partners became trustees for the creditors and it was their duty to manage the firm's property and assets with strict regard to the interest of the creditors. Neither partner, as long as this condition of affairs exist, will be permitted to secure his original capital by purchasing and taking possession of the firm's property or assets. He may, however, in good faith and for an adequate consideration purchase the property of an insolvent firm, but this consideration must not be his interest in the insolvent concern. He must give the partnership for the benefit of the creditors the real value of such property. (Mead *vs.* McCullough, 21 Phil. Rep., 95.)"

CHAPTER XI

COMMON CARRIER

LIEN OF COMMON CARRIER ON GOODS CARRIED.

Both under the American and Spanish law the carrier has a specific lien upon the goods carried for his hire in carrying them. Article 375 of the Code of Commerce reads as follows:

> "The goods transported shall be especially obligated to answer for the transportation charges and for the expenses and fees caused by the same during their transportation, or until the time of their delivery."

Blanco, in his Commentaries on the Code of Commerce, Volume II, p. 655, expresses his idea on the subject in the following manner:

> "For the fulfillment of the latter obligation (referring to paragraph 1 of Article 375 of the Code of Commerce), the Code gives the carrier a right of mortgage (derecho de hipoteca) upon the goods carried, by providing that the goods transported shall be *especially liable* to answer for the transportation charges and for the expenses and fees caused by the same during their transportation, or until the time of their delivery."

The Supreme Court of Spain in a decision dating May 6th, 1899, said:

> "According to Art. 375 of the Code of Commerce, the goods or cargo are subject to answer for the price of transportation and for the expenses and fees caused during their transportation and until the moment of delivery, the amount of which the carrier has a right to recover."

The underlying cause for allowing common carriers such a lien on the goods carried rests on their obligation to receive and carry any goods offered, and his liability for their safety in the course of transportation. (Yorke *v.* Grenaugh, 2 Ld. Raym. 866; article 366, Code of Commerce.)

And again, our Corporation Law (Act 1459) in section 86, paragraph 5, recognizes such lien in favor of railroad corporations. Said section 86, paragraph 5, reads:

> "In case of refusal, neglect, or failure to pay proper charges for the transportation of freight, goods or luggage to destination, the railroad corporation shall have the right to detain the freight transported until such time as the amount due shall be paid."

PROCEDURE UPON DEFAULT IN PAYMENT OF RAILROAD CHARGES.

If the payment of the rates of transportation on goods carried or transported by the railroad to their destination should not be effected within fifteen days after demand for payment, the corporation may apply to the justice of the peace of the municipality in which such goods are situate for their sale at public auction, and said justice of the peace, after giving notice of the application to the owner or consignee of the goods, shall order the sale at public auction of said goods or so much thereof as may be necessary to cover the expenses and costs of transportation and costs and expenses of sale. Notice of the sale shall be posted for at least five days prior to the sale in three of the most public places in the municipality in which the goods are situate. (Section 86, paragraph 5.)

PARTICULAR LIEN OVER GOODS.

The lien of the carrier for the payment of the transportation charges does not extend in a general and absolute manner by virtue alone of the pre-existing contract between the sender of the goods and the carrier over all the goods transported: That the nature of the lien is repugnant to this kind of a general lien; that the lien results from facts that are provided for by law, and that it does not take its origin from any express or implied agreement between the parties. When the transactions are different, each separate from the other, causing as many different charges for transportation as there are transactions, then the lien for charges relating to one transactions cannot be asserted over the goods which are the object of a transaction altogether different from the first, the same not being susceptible of assimilation if only for the reason that the two had been transported by virtue of the same contract between the same parties. (Estasen, Mercantile Law, Vol. 3, p. 389.)

POSSESSION OF GOODS BY CARRIER CLAIMING LIEN.

Under the American law continuous possession is necessary in order to preserve one's lien security; hence the general doctrine of liens requires the carrier who claims its benefit to retain possession of the goods, and not to deliver them up while his dues remain unsatisfied. An unqualified and voluntary delivery to the consignee entitled will, as a rule, discharge the lien if the carrier was not defrauded in making it. (Schouler on Bailments and Carriers, Sec. 440; Jones on Liens, Sec. 310.

Under the Spanish law the lien does not depend upon possession, but it partakes of the nature of a statutory lien. Thus, article 375, par. 2 and 376 of the Code of Commerce provide:

> "This special right shall be limited to eight days after the delivery has been made, and after said prescription the carrier shall have no further right of action than that corresponding to an ordinary creditor's."
>
> "The preference of the carrier to the payment of what is due him for the transportation and expenses of the goods delivered to the consignee shall not be affected by the bankruptcy of the latter, provided the action is brought within the eight days mentioned in the foregoing article."

As will be noted from a perusal of the foregoing articles, the carrier is not bound to hold in his possession the goods upon which he claims a lien in order to preserve such lien, but on the contrary possession is parted with. On this respect there is a marked distinction between the American and Spanish law.

The period of eight days is regulative of a substantive right in favor of the common carrier over the subject-matter of his contract with the shipper.

LIEN ON STOLEN GOODS.

The English doctrine holds that a carrier has a lien upon goods which have been stolen, so that he can detain them for his charges against the true owner, for when the goods are brought to him, he is obliged to receive them and carry them; and since the law compels him to carry them, it will give him a remedy for the premium due the carriage. (Yorke *v.* Grenaugh, 2 Ld. Ram. 686.)

The American decisions, on the other hand, discard the English doctrine and hold that a carrier has no lien for the carriage of goods which have been received from a wrong-doer, without the consent of the owner either express or implied. The reasons assigned in support of such holding are as follows: (1) the duty of the carrier to receive and carry goods arises only when they are offered by the owner, or by his authority. (Robinson *v.* Baker, 5 Cush (Mass.) 137, 51 Am. Dec. 54; Stevens *v.* Boston and W. R. Corp. 8 Gray (Mass.) 262.) (2) the settled general principle that no man can be divested of his property without his consent. (Saltus *v.* Everett, 20 Wend. (N. Y.) 267, 32 Am. Dec. 54.)

In the Philippine Islands, I think that the carrier will have a lien on stolen goods carried for the following reasons:

(1) Article 375 of the Code of Commerce does not make a distinction between goods received from the true owner and those received from a wrong-doer. In other words, it does not try to ascertain the ownership of the goods as a prerequisite to the creation of the lien. It says in clear and convincing words that "the goods transported shall be especially obligated."

(2) The injustice which would be done to the carrier, who is not at all to be blamed, for to make the principles of *caveat emptor* apply to him would mean an enormous delay in the transaction of his business.

(3) The reasons assigned by the American courts are not convincing to me.

LIEN FOR FREIGHT.

Under the American law, there is ordinarily a lien for freight under a charter-party. If the shipowner undertakes to carry the goods and not merely to lease his ship, it seems that there is lien for freight. The substance of the charter-party is considered, and not the form of it. If the ship be clearly leased to the charterer, there can be no lien, because the hirer is considered the owner for the voyage, and the ship owner has no possession of the goods or ship sufficient to maintain a lien. (Jones on Liens, Secs. 271-272.)

I believe that the same distinction as to whether the ship owner undertakes to carry the goods or merely to lease the ship obtains in the Philippine Islands. If the ship owner undertakes to carry the goods there is a lien. This is shown by a reading of Article 665 of the Code of Commerce, which provides:

> "The cargo shall be especially liable for the payment of the freight, expenses, and duties arising therefrom, which must be reimbursed by the shippers as well as for the part of the gross average which may be due, but it shall not be legal for the captain to delay unloading on account of delay in complying with this obligation."

It is really a great inconvenience to subject to a lien for freight goods shipped by third persons on a ship which is leased, in order to satisfy the shipowner for arrears due to him under the charter party. Again, I repeat, it is only when the ship owner undertakes to carry the goods that the lien arises.

PROCEDURE IN THE ENFORCEMENT OF THE FREIGHT LIEN IN THE PHILIPPINE ISLANDS.

It shall not be legal for the captain to delay unloading on account of delay in complying with the obligation for the payment of freights, expenses, and duties arising from the cargo. Should there be reasons for distrust, the court, at the instance of the captain, may order the deposit of the merchandise until he has been paid in full. (Art. 665, Code of Commerce.) The captain may request the sale of the cargo in so far as necessary to pay freight, expenses, and averages due him, reserving the right of action to recover the balance due him therefor if the proceeds of the sale should not have sufficed to cover his credit. (Art. 666, Code of Commerce.) The goods loaded shall be liable in the first place for their freights and expenses during twenty days, to be counted from the date of their delivery or deposit. During this period the sale of the same may be requested, even though there be other creditors and the case of bankruptcy of the freight or consignee should occur. This right cannot be made use of, however, on the goods which, after being delivered, were turned over to a third person without malice on the part of the latter and for a valuable consideration. (Art. 667, Code of Commerce.)

As will have been noted from the reading of Article 667 of the Code of Commerce, the lien on the freight does not depend exclusively upon possession. Said article intimates delivery by the carrier, that is, departure of possession. However, when the goods for which a lien for freight is claimed are in the possession of the Collector of Customs, then the Collector of Customs, upon being duly notified in writing of such a lien for freight, shall withhold the delivery of the same until satisfied that the claim has been paid or secured. In this case the lien is made to depend on possession, and as such it is an exception to the precept of article 667, par. 1, of the Code of Commerce awarding a lien independently of possession. (Administrative Code, Sec. 1468.)

CARRIER'S LIEN ON PASSENGER'S BAGGAGE.

Under the American law a lien attaches in favor of a carrier of passengers to the luggage of a passenger, either to secure the payment of his fare, or charges for extra luggage. Upon a railroad the lien attaches not only to luggage which the passenger delivers to the company's servant to be marked and carried as such, but also to whatever the passenger takes with him as luggage with the passenger coach; for this is considered so far in the possession of the agents of the company as to authorize it to exercise this right of detainer for the passenger's fare, or for freight upon the article itself. (Jones on Liens, Sec. 269.)

Our law also recognizing the existence of the lien in favor of the carrier of passengers on the passenger's luggage declares:

> "The captain, in order to collect the price of the passage and expenses of maintenance, may retain the goods belonging to the passenger, and in case of the sale of the same he shall be given preference to the other creditors, a procedure identical to that for the collection of freights being observed." (Article 704, Code of Commerce.)

SHIPOWNER'S LIEN FOR CONTRIBUTION (GROSS AVERAGE).

The American law recognizes a lien for general average contributions from the cargo where the expenditure has been for the purpose of saving the whole venture, the ship as well as the cargo. In that case the owners of each part saved must contribute ratably, and the master may retain each part of the property saved until the amount of contributions in respect of it is paid or secured. The ship owner is the only person who can exercise this lien.

Our law on this subject also confers a lien on the cargo in favor of the shipowner for the part of the gross average which may be due. (Art. 665, Code of Commerce, supra.) The procedure observed for the collection of such lien is identical to that for the collection of freights, previously discussed.

That the amount of gross average apportioned against the vessel during its last voyage may enjoy the preference established in article 32, it shall be necessary:

1. That the provisions of articles 813 and 814 of the Code of Commerce should have been complied with.

2. That the expenses incurred and the damages done be in proportion to the gross average.

3. That the justification of the average should have been made with the intervention of the Spanish judicial authorities, if the port of arrival or unloading be Spanish; if foreign, with the intervention of the Consular authority, and if none there be then before the local authority. A memorandum of the result must be made in the vessel's certificate of ownership which the captain must be provided.

4. That the liquidation of the average should have been made in accordance with the provisions of the Code of Commerce and a memorandum of its result made in the same certificate of ownership.

If the liquidation takes place in a Spanish port where the creditor is domiciled, the latter shall be summoned to take part in the liquidation of the average; but in this case his right shall be limited to recording his protest only when in his opinion the law has not been complied with. If he does not record his protest it shall be understood that he consents to the liquidation and he shall not be permitted to object to it.

The temporary memorandum of the cause of the average, as well as the provisional memorandum of its liquidation shall have all the effects upon the lien (preferencia) until the vessel arrives at the port of its departure, the provisions of paragraphs three and four of the last preceding article being applicable in such cases. (Article 34, Marine Mortgage Law of Spain, August 31, 1893.)

LIEN FOR DEMURRAGE.

In the case of Chicago and Northwestern R. Co. *v.* Jenkins, 103 Ill. 588, Mr. Justice Walker, speaking for the court said: "The right to demurrage, if it exists as a legal right, is confined to the maritime law, and only exists as to carriers by seagoing vessels. But it is believed to exist alone by force of contract. All such con-

tracts of affreightment contain an agreement for demurrage in case of delay beyond the period allowed by the agreement, or the custom of the port allowed the consignee to receive and remove the goods."

Under the Spanish maritime practice, I believe that a lien for demurrage obtains, as gathered from the discussion by Madariaga in his book entitled "Cuestiones de Derecho Marítimo, p. 37.)

CHAPTER XII

SALVAGE

LIEN OF SALVOR.

CIRCUMSTANCES GIVING RISE TO A CLAIM FOR "SALVAGE."

Section 1 of our Salvage Act (No. 2616) provides that "when, in case of shipwreck, the vessel or its cargo shall be beyond the control of the crew, or shall have been abandoned by them, and picked up and one conveyed to a safe place by other persons, the latter shall be entitled to a reward for the salvage. Those who, not being included in the above paragraph, assist in saving a vessel or its cargo from shipwreck, shall be entitled to a like reward." With reference to the question of abandonment the law is stated as follows:

> When a vessel is found at sea, deserted, and has been abandoned by the master and crew, without the intention of returning and resuming the possession, she is in the sense of the law, derelict, and the finder who takes possession with the intention of saving her is called a *salvor;* and he acquires a right to be paid for his services a reasonable and proper compensation, out of the property itself. This is called *"reward for Salvage."* (The Bee, Fed. Cases, No. 1219; 3 Fed. Cas. 41.) Property is not, in the sense of the law derelict and the possession left vacant for the finder until the *spes recuperandi* is gone, and the *animus revertendi* is finally given up. (The Aquila, 1 C. Rob. Adm., 41.) But the abandonment of a vessel by all on board, when the vessel is in peril, that is to say, when she is left to the mercy of the elements, will justify third parties in taking possession with the *bona fide* intention of saving the vessel and its cargo for its owners. The mental hope of the master and the crew will in no way effect the possession nor the right to salvage. (The John Gilpin, Fed. Cas., No. 7345; 13 Fed. Cas., 675; The Shawmut, 155 Fed. Rep., 476; The Hyderabad, 11 Fed. 749; The Cairnsmore, 20 Fed., 519; The Ann. L. Lockwood, 37 Fed. 233.)

PREREQUISITE TO ANY ALLOWANCE.

The doctrine of salvage requires, as a prerequisite to any allowance, that the service "must be productive of some benefit to the owners of the property salved; for, however, meritorious the exertions of the alleged salvors may be, if they are not attended with benefit to the owners, they cannot be compensated as such." (In the L. W. Perry, 71 Fed. Rep. 746.)

NATURE OF THE LIEN.

Under the Spanish law, a lien exists upon the vessel which a purchaser of the same would be obliged to respect and recognize, for salvage dues under Art. 842 of the Code of Commerce. (Madariaga, Cuestiones de Derecho Marítimo, 85.) Said article reads as follows:

> "The goods saved from the wreck shall be specially liable for the payment of the expenses of the respective salvage, and the amount thereof must be paid by the owners of the former before they are delivered to them, and with preference to any other obligation, if the merchandise should be sold."

Under our present Salvage Act (No. 2616) "the expenses of salvage, as well as the reward for salvage or assistance, shall be a charge on the things salvaged or their value." (Sec. 13.)

No other source, however, better recognizes the existence of the lien both under the American law and our present system than the famous case of Erlanger and Galinger *vs.* The Swedish East Asiatic Co. et al., recently decided by our Supreme Court reported in 14 Off. Gaz. 2043, Our Supreme Court in the above entitled case reannouncing the doctrine of the Carl Schurz, 5 Fed. Cas., 84, said:

> "A salvor, in the view of the maritime law, has an interest in the property; it is called a lien, but it never goes, in the absence of a contract expressly made, upon the idea of a debt due by the owner to the salvor for services rendered, as at common law, but upon the principle that the service creates a property in the thing saved. He is to all intents and purposes, a joint owner, and if the property is lost he must bear his share like other joint owners."

SALVAGE ALLOWANCE

There is no fixed rule for salvage allowance. The allowance rests in the sound discretion of the court or judge, who hears the case, hears the witnesses testify, looks into their eyes, and is acquainted with the environment of the rescue. But the reward for the salvage or assistance shall in no case exceed fifty per cent of the amount remaining from the proceeds of the sale of the things saved, after deducting the expenses of their custody, conservation, advertisement and auction, as well as whatever taxes or duties they should pay for their entrance, and the expenses of salvage. (Section 11, Act 2616.)

CREW OF SHIP NOT CONSIDERED AS SALVORS.

The crew of a ship cannot, both under the American and our present law, be considered as salvors and as such entitled to salvage reward, for the obligation which a mariner contracts with the ship in which he engages to serve is not only to navigate her in favorable weather, but likewise in adverse weather inducing shipwreck, to exert himself to save as much of the ship and cargo as he can. It is a part of his bounden duty (to be compensated by payment of wages) to protect the ship in which he is engaged to serve through all perils. A salvor, on the other hand, being "a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventure, without any preexisting covenant that connected him with the duty of employing himself for the preservation of that ship." (The Neptune 1 Haggard, Admiralty, 227.)

RANK OF SALVAGE LIEN.

The lien for salvage outranks the following liens:

Lien for a prior collision.

The America, 1 Fed. Cas. No. 288, p. 616;
Lewis *v.* Elizabeth Jane, 1 Ware, 41;
The Jeremiah, 10 Ben. 338.

Lien for prior supplies.
The America, supra;
The William T. Graves, 8 Ben. 568;
The Barney Eaton, 1 Biss. 242;
The General Burnside, 3 Fed. Rep. 228;
The M. Vandecook,24 Fed. Rep. 472.

Lien of prior bottomry bond.
The William F. Safford, Lush. 69.

Lien for general average.
The Spaulding, Bro. Adm. 310.

Government claim for duties on imported goods.
Merritt *v.* One Package, 30 Fed. Rep. 195.

SEAMEN'S WAGES

SEAMEN'S LIEN FOR WAGES.

Under the American law, seamen have a lien on the ship for services. In admiralty, this privilege stands upon a general principle affecting all privileged debts; that is, among creditors he shall be preferred who has contributed most immediately to the preservation of the thing. (The Paragon, 1 Ware, 326, Fed. Cases, No. 10708.) This lien adhering to the last plank of a ship.

This same principle obtains in the Spanish law as shown by Art. 580 of the Code of Commerce which reads as follows:

> "In all judicial sales of vessels for the payment of creditors, the following shall have preference in the order stated:
>
> "'* * * The salaries due the captain and the crew, during their last voyage, * * *.'"

The case of McMicking *vs.* Banco Español-Filipino, 13 Phil. 438, has held that "this article creates a lien upon a ship in favor of the crew engaged in the operation and this lien takes a certain preference in accordance with the provisions of said Article 580.

NATURE OF LIEN.

Liens in favor of the crew under these circumstances are known as legal liens and whoever buys a ship or loans money and takes a chattel mortgage as security, takes the ship subject to such securities. The remedy is *in rem*, that is, against the ship by foreclosing the lien against the same. (McMicking *v.* Banco Español-Filipino 13 Phil. 438-439.) The ship in such case is subject to a "right of persecution" which is the power given to the lien holder to collect the amount of his credit by having the vessel attached and sold without regard to the changes of ownership of the vessel, that is, even though the vessel may be in the hands of third parties. The lien adheres to the vessel and follows it constantly in whatever hands it may be in possession, just as the shadow follows the body, as practical people will put it. (Revilla, Commentaries on the Marine Mortgage Law of Spain, 140, 141; Article 584, Code of Commerce.)

TO WHAT PROPERTY LIEN EXTENDS.

Under the American law, seamen not only have a lien on the vessel for their wages, but they also have a lien on the freight. (Poland *vs.* The Spartan, 1 Ware (U. S.) 134, 145, Fed. Cases No. 11426.) The lien thus established on the freight is usually an easier and simpler method to proceed against the master of the ship. Seamen also have a lien on the cargo for their wages (Poland *v.* The Spartan, 1 Ware (U. S.) 134, 145, Fed. Cases No. 11426).

Under the Spanish Law, by a mere reading of paragraph 6 of article 580 of the Code of Commerce it would seem that the system of lien on the freight for seamen's wages does not obtain; the only lien recognized being that attaching to the vessel itself and not on the freight or cargo. But by a reference to article 646 of the Code of Commerce it is clear that the lien also exists on the freight. Said article runs as follows:

> "The vessel with her engines, rigging, equipment, and freights shall be liable for the pay earned by the crew engaged per month or for the trip, the liquidation and payment to take place between one voyage and the other.
>
> "After a new voyage has been undertaken, credits such as the former shall lose their right of preference."

This article creates a lien upon a ship in favor of the crew engaged in the operation of the same and this lien in favor of the crew takes certain preference in accordance with the provisions of said article 580. The wages due the crew and expenses incurred in maintaining the ship during the last voyage constitute a lien under the law and take preference over a lien created by giving the ship as security for money borrowed. (McMicking *vs.* Banco Español Filipino, 13 Phil. Rep. 438.)

LIEN HOLDS AGAINST VESSEL UNDER CHARTER.

Inasmuch as a seaman's lien on the ship for his wages is an incident to his employment on board, his lien attaches although he is employed by a charterer who runs the vessel on his own account. (The International 30 Fed. 375; The Samuel Ober, 15 Fed. 621; The Canton, 1 Spr. (U. S.) 437, Fed. Cas., No. 2388.) His service is rendered primarily to the ship; and, in the view of the maritime law, the ship is primarily liable. The lien arises, therefore, as the legal incident of his service. It does not depend upon contract, but is given by the general maritime law whenever he is lawfully employed on board. (The International, 30 Fed. 375.)

LANDSMEN (CARGADORES) ASSISTING IN LOADING VESSEL NOT ENTITLED TO LIEN.

Persons who are employed to assist in loading a vessel are not entitled to a lien for seaman's wages, for the reason that they do not perform a maritime service, which is essential to entitle a seaman to his lien for wages. (The Ole Oleson, 29 Fed. 384; The Sarah H. Kennedy, 29 Fed. 264; Granman *v.* The Humboldt, 86 Fed. 351.)

IS MASTER OF SHIP ENTITLED TO LIEN FOR HIS WAGES.

Under the American Law, which is the general rule obtaining in admiralty, the master of a vessel is not entitled to a lien on the ship for his wages. (The William

M. Hoag, and The Three Sisters, 69 Federal Reporter, 742 citing many authorities. The reasons assigned for not allowing such lien are: First, because when the master contracts, he is supposed to trust to the personal credit of the owner.) (Willard *v.* Dorr, 3 Mass. (U. S.) 91, Fed. Cas. No. 17679. Second, the inconvenience and expense to which the owners might be subjected if, in every dispute with the master, he could take the vessel out of their hands, and thus compel them to submit to improper charges. (The Grand Turk, 1 Paine (U. S.) 73 Fed. Cas. No. 5683.)

The master is allowed a lien upon the vessel in continental Europe. The Graf Klot, 8 Fed. Rep. 833 (Germany); The Velox, 21 Fed. Rep. 479 (Holland); The Olga, 32 Fed. Rep. 330 (Italy); The Angela Maria, 35 Fed. Rep. 430 (Italy). In England he has a lien by statute. The Sabina, Lush. 545. There are similar statutes in several states, and the statutory lien is enforced in admiralty. (The Sabina, Lush. 545.)

The rule which obtains in the Philippine Islands is that the master of the vessel has a lien on the ship for wages, as may be seen from a simple perusal of article 580 of the Code of Commerce which reads:

> "In all judicial sales of vessels for the payment of creditors, the following shall have preference in the order stated:
>
> "'* * * The salaries due the captain and the crew during their last voyage. * * *'"

IS A STEVEDORE ENTITLED TO A LIEN

Under the American Law, a stevedore is entitled to a lien for his services in loading or discharging a foreign vessel. In the Main, 51 Fed. 594, it was said:

> "The services of a stevedore in loading and stowing cargo on board of a ship, and in unloading a cargo from a ship, are largely employed on board the vessel itself, and generally he uses the ship's tackle and machinery in performing the work. It is difficult to see why hoisting and lowering a cargo on a vessel is not as much a maritime service as hoisting and lowering yards and sails. A vessel, in taking on and unloading cargo, is earning freight; for, in loading and unloading cargo services are rendered the expense of which necessarily enters into the affreightment contract. It may be true that stevedores, when employed by the owner or consignee, are employed on personal credit; but it is not true, that when stevdores are employed by a master in a port they are employed on the personal credit of the master."

When the stevedore's services are rendered in a home port, there is no lien in the absence of a statute to the contrary. (The Wyoming, 36 Fed. 493; The Gilbert Knapp, 37 Fed. 209.)

In the Philippine Islands, no lien exists in favor of a stevedore for services rendered in loading and unloading a foreign vessel, inasmuch as article 584 of the Code of Commerce expressly says that "for debts of any other kind whatsoever not included in the said article 580, the vessel can only be attached in the port of her registry," and a stevedore's debt nowhere appears to be included in article 580 of the Code of Commerce referred to above.

ASSIGNMENT OF SEAMEN'S LIEN FOR WAGES.

Whether or not a mariner's lien for wages may be assigned is a question upon which the authorities in the United States are not in harmony. But the case of the William M. Hoag, 69 Fed. Reporter 742, upholding the assignability of the lien said:

> "* * * The lien of mariners for wages should stand upon the same footing with those of other laborers upon vessels and of material-men. When the services are rendered, and the right is perfected, the assignability of a thing enhances its value, and a non-assignable character given to a mariner's lien is more likely to injure than to protect the owner; when the services are rendered, and the right is perfected, there is no more reason to deny the mariner's right to dispose of this property than there is of any other belonging to him. The law guards him against imposition without imposing disabilities upon him in the enjoyment of his property and rights. Unless the assignee is a speculator, or there is other reason to question or suspect the fairness of the transaction, the lien for wages in the hands of the assignee should be enforced."

For the reasons assigned in the above quotation and due to the fact that there is no law expressly prohibiting the assignment of such lien, it may be said that the same principle obtains in the Philippine Islands with regard to the assignability of mariner's lien for wages.

RANK OF LIEN FOR WAGES.

Lien for wages outrank the following liens:—

Liens for supplies.

The Panthea, 1 Asp. Mar. Cas. 133;
The American, supra;
The Hilarity, Bl. & How. 90;
The Rodney, Bl. & How. 226;
The William T. Graves, supra;
The Mary A. Rich, 9 Ben. 187;
The City of Tawas, 3 Fed. Rep. 170;
The General Burnside, supra;
The Graf Klot Trautvetter, 8 Fed. Rep. 833.

Liens for towage.

The Andalina, 12 Prob. Div. 1;
The City of Tawas, supra;
The Athenian, 3 Fed. Rep. 248.

Liens for port duties, i. e., light and dock dues.

The Andalina, supra.

Subsequent solicitor's lien for costs in defending actions against the ship.

The Livietta, 8 Prob. Div. 209.

Liens for a prior mortgage.

The Mary Ann, L. R. 1 Ad. 8;
The Feronia, L. R. 2 Ad. 65;
The Ringdove, 11 Prob. Div. 120;
The Island City, 1 Low 375;
The City of Tawas, supra.

(*To be continued.*)