

**HAYFORD v. DOUSSONY et al.**  
No. 5390.

Circuit Court of Appeals, Fifth Circuit.  
July 28, 1930.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

On rehearing.

Rehearing denied.

For former opinion, see 32 F.(2d) 605.

Eugene S. Hayford, of New Orleans, La., for appellant.

J. L. Warren Woodville and Henry P. Dart, Jr., both of New Orleans, La. (Dart & Dart, Henry Grady Price, and Arthur B. Hammond, all of New Orleans, La., on the brief), for appellees.

Before BRYAN and FOSTER, Circuit Judges, and SIBLEY, District Judge.

BRYAN, Circuit Judge.

On the original appeal we held that, on the evidence disclosed by the record before us, the Pirate Ship was not engaged in navigation, commerce, or any maritime venture, and consequently that the claims asserted by the libelants were not within the admiralty jurisdiction. The decree of the District Court which sustained those claims as maritime liens was therefore reversed. 32 F.(2d) 605. Before that appeal was taken, the Pirate Ship was sold for \$1,500, and the proceeds of sale were distributed pursuant to an order of court to various libelants.

Paul F. Jahneke, purchaser at that sale, filed his petition for rehearing on the ground that all the facts were not disclosed by the record. He stated in his petition that he was not given proper notice of the appeal, and therefore was given permission to file a supplementary transcript of record so as to bring up any evidence that had been omitted from the original record; and a rehearing was granted in order to determine whether there was any new evidence which would affect or change our opinion upon the facts.

There is nothing in the supplementary record that was not stated in substance in the original record. The argument on the rehearing was not based upon any mistake of fact, but was to the effect that we were wrong in our conclusion of law that the claims asserted were not within the admiralty jurisdiction. But we still think that the question of law was correctly decided, for the reasons stated in our original opinion. It may be that

Jahneke has an equitable claim by subrogation as a result of his having paid for appellant's benefit what may under the state law constitute nonmaritime liens, *St. Joseph Land Co. v. MacLean* (C. C. A.) 32 F.(2d) 984, 988; but whether he has or not cannot be determined in this proceeding.

The decree is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

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**W. N. MATTHEWS CORPORATION v. ALLIANCE SECURITIES CO.**

No. 8711.

Circuit Court of Appeals, Eighth Circuit.  
July 18, 1930.

Appeal and error ~~6~~832(6).

Reargument and resubmission on appeal is unnecessary, where appellant's contention on petition for rehearing related solely to court's misunderstanding of nonquestionable fact.

Appeal from the District Court of the United States for the Eastern District of Missouri; Charles B. Davis, Judge.

On petition for rehearing.

Petition for rehearing denied, and former opinion and order modified.

For former opinion, see 40 F.(2d) 879.

Delos G. Haynes, of St. Louis, Mo., for appellant.

Samuel E. Darby, of New York City (Rodney Bedell, of St. Louis, Mo., on the brief), for appellee.

Before STONE and BOOTH, Circuit Judges, and REEVES, District Judge.

STONE, Circuit Judge.

Appellant has filed a petition for rehearing which, *inter alia*, contends that the court has inadvertently erred in the last paragraph of the opinion in holding infringing appellant's construction known as C 6-C 7. We think this contention well taken. This construction employs an "air regulating and conditioning unit." The court erroneously stated, in the former opinion, that this unit was placed "in the branch direct to the nozzle." It is not so placed, but is located on the main air line from the air tank to the point where the air branches to the material container. Thus placed, it affects the pressure both to