

LYLES and others v. THE STEAMSHIP SANTIAGO DE CUBA.

(District Court, E. D. New York. April 15, 1880.)

ADMIRALTY—PRACTICE—VACATING ORDER—APPEARANCE.—A motion will not be entertained to vacate, for irregularity, an order made seven years previous and with notice.

Beebe, Wilcox & Hobbs, for libellants.

Butler, Stillman & Hubbard, for respondent.

BENEDICT, D. J. This case comes before the court upon an application for an order directing the payment, into the registry of the court, to the credit of this cause, of sufficient of the proceeds of the sale of the above-named steamship to satisfy the demand of the libellant herein. Many difficulties in the way of the application, arising out of the proceedings had, could be stated. It is sufficient to notice two. The ground of the application is a supposed irregularity in the entry of an order of this court directing the surplus moneys in the registry of the court, to the credit of an action brought by Reynolds and others against the above-named vessel, to be passed to the credit of certain other actions then pending in this court against the same vessel, the vessel having been condemned and sold by decree of this court, made in the action of Reynolds and others.

At the time of making that order the proceedings in court instituted by these libellants had in reality been abandoned. It seems impossible, on any other theory, to account for the delay in their action, and the proceedings had in regard to the fund in court. It is too late for these libellants to question the regularity of an order made more than seven years ago, and with full knowledge thereof at the time by their proctor, and upon the understanding that this claim was to be prosecuted no further.

In the next place, the order complained of was made in an action brought by Reynolds and others, in which suit no ap-

pearance was ever entered in behalf of these libellants. If these libellants desired to be heard in regard to the funds remaining to the credit of that cause, an appearance in behalf of the libellants should have been entered therein, in which case they would have been entitled to notice of the order complained of. In the absence of such an appearance, the record in that cause wholly failed to give information that the libellants claimed to have any interest in the fund, and they cannot now be permitted to assert that want of a formal notice entitles them to ask to have the order set aside as irregular, or to require a return of the fund, which that order directed to be transferred to the credit of other causes, and which has been distributed in those actions.

The motion must therefore be denied.

WILLS v. CHANDLER and another.

(Circuit Court, D. Nebraska. May 8, 1880.)

JUDICIAL SALE—ORDER OF CONFIRMATION.—An order of confirmation of a judicial sale may cure all irregularities in the course of the proceeding, but can add nothing to the authority of the officer to make it.

SAME—DENIAL OF MOTION TO VACATE ORDER OF CONFIRMATION—ESTOPPEL.—A party is not estopped from bringing an action to set aside a judicial sale made without authority, by the fact that the court may have overruled the motion to set aside the order confirming such sale.

SAME—SAME—PRESUMPTION—COURT OF EQUITY.—Where a motion made in a state court of Nebraska, five years after a judicial sale, for a vacation of the order confirming the same, was denied, and no ground for denial appeared in the record, *held*, that it would be presumed to have been denied because made too late for the court to grant such relief, but that it was not too late for a court of equity to grant such relief as party was entitled to.

JUDGMENT—ENFORCEMENT AND SATISFACTION.—In the absence of statutory regulation no one but a party, or his attorney or agent, can satisfy a judgment, or direct its enforcement by execution.

SAME—SHERIFF—HAS NO CONTROL OVER JUDGMENT.—A sheriff has no interest in or control over a judgment, which may include his fees, that will authorize him to enforce it. If same is settled or discharged he must look to the plaintiff or his attorney for his fees.

SAME—CLERK—ISSUING EXECUTION.—A clerk has no authority, in the absence of statutory regulation, to issue execution without the direction of the plaintiff or his attorney.

SAME—SATISFACTION OF—ATTORNEY CANNOT CANCEL.—An attorney who has given a release and satisfaction of a judgment cannot, without the consent of the other, cancel the same, and authorize an execution to issue.

EXECUTION SALE—SHERIFF'S POWER.—In making an execution sale a sheriff acts by virtue of a power, and if no power exists nothing passes.

Kennedy & Gilbert, for plaintiff.

G. W. Ambrose and J. M. Woolworth, for defendants.

McCRARY, C. J. This is a bill in equity to quiet plaintiff's title to certain lands in the city of Omaha. It is admitted that the plaintiff's title is perfect, unless it has been divested by a sale under execution issued upon a judgment for \$251.31 and costs, in favor of Baneroft and others and against one Nuckolls, rendered by the district court of Douglas county, v.2,no.3—18