

Rescue. In backing towards the flat after the tow-boat had broken the ice and opened a way to Jackson's float, there was a plain lack of that degree of care which the occasion called for. As no one was left on the flat to warn off the Rescue as she approached, it was imperative that some one should have been on watch at the stern of the tow-boat. Conceding that the pilot is correct when he says the flat could be seen from the pilot-house "every time I looked at her," still he had his other appropriate duties to perform and could not closely and constantly watch the flat. Hence, as he himself states, the stern of the tow-boat was only about seven or eight feet from the flat when he rang the stopping-bell, and the headway was not arrested in time. The flat was not only hit by the Rescue, but one of her wheel-arms, coming down on the top of the flat, forced it under water. Undoubtedly, the collision could have been avoided by the exercise of proper care. The proof is clear that the disaster was altogether the result of culpable negligence on the part of the Rescue.

The libellant's claim, so far as it relates to the expense of raising and repairing the flat-boat, is well made out; but the item of demurrage must be disallowed. The evidence as to actual loss here is somewhat vague, and I incline to think there was unnecessary delay in raising the flat. The controlling reason, however, for denying demurrage is that the other damages allowed are probably as much as the flat was reasonably worth when she was sunk. Now, the general rule is that the damages allowed for injuries to a vessel should not exceed her value at the time of collision, (*The Venus*, 17 FED. REP. 925,) and there is nothing in this case to take it out of that rule.

Let a decree be drawn in favor of the libellant for \$459.21, with interest from July 1, 1884, and costs.

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THE WM. KRAFT.

(District Court, W. D. Pennsylvania. June 17, 1885.)

**PURCHASE OF VESSEL—NOTICE OF LIEN—ESTOPPEL.**

While respondents were negotiating for the purchase of a steam-boat, a lien-creditor notified them of his claim, and warned them not to buy until it was settled; but subsequently informed them that it was settled, at the same time remarking that they ought to see that they got a good bond; thereupon the respondents completed the purchase, and paid the price, taking the customary bond of indemnity against liens generally. *Held*, that such creditor was estopped from asserting that said claim was a lien against the boat in the hands of the respondents, to the prejudice of the respondents and their surety in said bond.

In Admiralty.

*Albert York Smith*, for libellants.

*Knox & Reed*, for respondents.

ACHESON, J. While the respondents were negotiating for the purchase of the steam tow-boat Wm. Kraft, Joseph Short, one of the libelants, notified them of the claim in question, and warned them not to buy until it was settled; but afterwards he returned to the respondents and informed them that the claim had been settled. The respondents then consummated the purchase, and paid the full consideration in cash and negotiable paper. So far there is no dispute as to the facts. But both respondents further testify that at the second interview Short told them the boat did not owe the libelants anything, and to go ahead and buy her. This Mr. Short denies; but I think the weight of the testimony here is with the respondents. Short's account of the matter is this: "I told him [Hodgson] the account was settled, and at the same time told him significantly that he should see that he got a good bond." But, if it be true that Mr. Short's language was that "the account was settled," the respondents had a right to infer, under the circumstances, that they were now at liberty to purchase without reference to this claim. Indeed, Short's conduct admitted of no other interpretation.

It is a customary thing for a purchaser of a steam-boat to take a bond of indemnity against liens, and the respondents would naturally regard Mr. Short's observation on that subject as a friendly suggestion having respect to other and secret liens. Such bond of indemnity against liens generally the respondents did take, as any prudent purchaser of a steam-boat would ordinarily do. It appears, however, that the solvency of the surety in this bond is now somewhat questionable. But the surety himself is entitled to protection against a claim which the creditors have waived, or estopped themselves from asserting.

I have carefully looked into the evidence, and am very clear that the libelants have estopped themselves from asserting a lien against the boat in the hands of these respondents. The fact is the claim *was* settled. True, the libelants took notes for part of it, but this circumstance was not disclosed to the respondents, or the surety in the bond of indemnity. Now, doubtless, the mere taking of a note does not operate to discharge a lien, and, as against the former owner of this boat, the lien might well be enforced, the notes being overdue and unpaid. But when the court is asked to enforce the claim as a lien, to the prejudice of the present owners and their surety, a very different question is presented. As against them good faith forbids the libelants to assert the claim.

Let a decree be drawn dismissing the libel, with costs.

## BALLIN and others v. LEHR and others.

*(Circuit Court, S. D. New York. April, 1885.)*

## REMOVAL OF CAUSE—ACT OF 1875—CITIZENSHIP—ALIENS.

A., a citizen of New York, and B., a citizen of New Jersey, sued C., a citizen of Maryland, and D., a subject of Prussia, in the state court. *Held*, that the suit was removable to the United States circuit court.

## Motion to Remand.

*David Leventritt*, for plaintiffs.

*Samuel W. Weiss*, for defendants.

WHEELER, J. One of the plaintiffs is a citizen of New York, and the other of New Jersey; one of the defendants is a citizen of Maryland, and the other a subject of Prussia. The act of 1875, (Supp. Rev. St. 174,) makes suits removable in which there is a controversy between citizens of different states, or between citizens of a state and foreign citizens or subjects. There are no citizens of the same state, nor citizens or subjects of the same foreign country, on opposite sides of the controversy in this suit. Each person on one side is a citizen of a state, and each person on the other is a citizen of another state or country. The statute uses the plural number only, but this includes the singular, and does not imply that there must be more than one citizen of the same state on one side of every controversy to make the suit removable. A suit in favor of one citizen of one state against one citizen of another state, or an alien, would be none the less removable, because there were not more than one of each class. There is no person here, as a party to this controversy or suit, who is not within the description of the statute as to all of his opponents. There is no occasion for any severance of causes of action or parties; the statute covers the whole. *Removal Cases*, 100 U. S. 457.

Motion to remand denied.

## MAIRER v. OLMSTEAD and others.

*(Circuit Court, S. D. New York. April, 1885.)*

## REMOVAL OF CAUSE—TIME OF REMOVAL—REPEAL OF REV. ST. § 639, CL. 2.

The second clause of section 639 of the Revised Statutes was repealed by the act of 1875.

## Motion to Remand.

*J. D. McClelland*, for plaintiff.

*F. W. Angell*, for defendant.

WHEELER, J. The removal of this cause from the state court being after a term at which it could have been tried, and therefore too late