

THE TONAWANDA.<sup>1</sup>

## JARVIS and others v. THE TONAWANDA.

(Circuit Court, E. D. Pennsylvania. January 17, 1887.)

## MARITIME LIEN—LACHES.

Unregistered and secret maritime liens may be enforced against a vessel in the hands of *bona fide* purchasers, unless the holders of such liens have been guilty of negligence or laches. See the same case, reported at length, in 27 Fed. Rep. 575.

## In Admiralty.

Appeal from district court. See 27 Fed. Rep. 575.

*Etting & Williams*, for libelants.

*Henry R. Edmunds*, for respondents.

McKENNAN, J. The defense of the respondents in this case is apparently so equitable, and therefore meritorious, that I have examined and considered the whole case with an earnest desire to make that defense effective against the claim of the libelants. They have done nothing, and have not forborne to do anything, in my judgment, which precludes the assertion by them of any just or legal reason for denying their liability. They were *bona fide* purchasers of the vessel from its real as well as ostensible owners. They received assurances of the freedom of the vessel from all liens and charges, and they took from their vendor a conveyance, with his personal warranty, which was rendered ineffective by subsequent insolvency. Hence they had a right to believe that they had paid the full consideration for their purchase for which they were, in any wise, bound. But the libelants held an unregistered and secret lien upon the vessel, which they had an undoubted right to enforce, unless they have lost it by their own negligence. Greater promptitude on their part in tracing the ownership of the vessel, and in demanding payment for their debt from the purchasers of it, might have enabled the latter to protect themselves by a resort to their vendor; but I am constrained to the conclusion, by the pressure of decided cases, that they are not chargeable with such laches as will subject them to the loss of their remedy against him. This is fully and satisfactorily described in the opinion of the learned judge who decided the case in the district court. I therefore adopt his views, and now order that a decree be prepared and entered in this court for the same sum decreed by the district court, in favor of the libelants, and against the respondents, with costs.

<sup>1</sup>Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

THE BRANDOW.<sup>1</sup>

## THE BESSARABIA.

BOYLE, Master, etc., v. THE BESSARABIA, etc.

(District Court, E. D. South Carolina. February 8, 1887.)

## 1. SALVAGE—UNNECESSARY ASSISTANCE.

One who voluntarily goes to the assistance of a vessel in distress, with the intent and hope of aiding her, but who fails to arrive until his assistance has ceased to be necessary, is not entitled to compensation as a salvor, nor is his *status* altered by reason of the circumstance that he participated in the efforts to save the vessel, if at the time of arrival his assistance was not required.

## 2. SAME—COSTS—UNNECESSARY ASSISTANCE—INTENT—EFFECT OF.

While one who goes to the assistance of a vessel in distress, but who fails to arrive until the necessity for his aid has ceased to exist, cannot claim as a salvor, the court will, in considering the question of costs, have a due regard for the intent and hope of the libellant, and, if it appears that the efforts of the libellant were made with the intent and hope of rendering assistance, the costs will be divided.

In Admiralty. Libel for salvage.

A. G. Magrath, for libellant.

Mitchell & Smith, for claimant.

SIMONTON, J. On the morning of the eighteenth January, 1887, about half past 12 A. M., a fire broke out in the Bessarabia, then loading with cotton in the port of Charleston, at Atlantic Wharves. The steam-ship was built in compartments. One of these forward was divided into two parts by wooden bulk-heads. There were in the ship, when the fire broke out, some 1,100 bales of cotton. About 400 of these bales were in the compartment aft, the remainder were in the compartment forward. Smoke was seen coming out of the forward hatch, and the fire was evidently in the forward compartment. The alarm of fire was first given by the watch on the ship. The master of the steam-ship, coming on deck, set his pump going, and sent a stream of water down the forward hatch with the ship's hose. He sounded no alarm from his vessel, but he requested the watchman on the wharf to sound the city fire alarm, and thus to summon the city fire department. In five minutes this was done. The fire department responded at once, and were on the scene of action in five or six minutes after the alarm was sounded, with five steam fire-engines, having four others in reserve. As soon as the fire department arrived, its chief took charge of the fire, with the full concurrence of the master of the steam-ship, and in a short time had 4, and soon afterwards had 10, streams of water pouring into the forward hatch, from hose discharging each about 800 gallons of water a minute. This steady stream of water produced its natural result. The fire was at once under control, and after some time was subdued. After the fire was out, and

<sup>1</sup>Reported by Theodore M. Etting, Esq., of the Philadelphia bar.