

of complainant to make the kind of slates he was putting upon the market, the defendant, in a bullying and menacing style, asserts to the trade by these circulars that complainant is infringing the Goodrich patent, and threatens all who deal in complainant's slates with lawsuits, and all the perils and vexations which attend upon a patent suit. The average business man undoubtedly dreads, and avoids, if he can, a lawsuit of any kind, but a suit for infringement of a patent is so far outside of the common man's experience that he is terrorized by even a threat of such a suit. There seems to me certainly good grounds for doubting the validity of the Goodrich patent in the light of the state of the art at the time he entered the field; and that any lawyer well versed in the law of patents would surely hesitate to advise that the complainant's slates infringed the Goodrich patent, either before or after the reissue; and the conduct of the defendant in dismissing his suits for such alleged infringement without trial, shows that he did not believe that such infringement could be established.

I am, therefore, of opinion that the complainant has made a case entitling him to the interposition of a court of equity to prevent the issue of circulars, or other written or oral assertions, that the slates made by the complainant are an infringement upon the defendant's patent; and a decree may accordingly be entered as prayed in the bill.

THE SEA LARK.¹

HUDGINS *et al.* v. THE SEA LARK.

(*District Court, E. D. Virginia.* January 14, 1888.)

ADMIRALTY—DECREE—SUBSEQUENT CLAIM.

When the time fixed by the rules of court for making defense has elapsed, and the libel has been taken for confessed, but the formal decree of condemnation and sale has not been entered, on account of the absence of the judge, any maritime claimant who comes in by petition subsequent thereto, does so subject to the libel, and cannot be paid till the libelant is paid in full, although his claim was originally prior to the libel in dignity.

In Admiralty.

Libel by Hudgins and Hurst for the cost of sails furnished the sloop *Sea Lark*. The question at issue is whether the claim of libelants should have priority over the claim of one Mitchell, a seaman, for wages accruing prior to the claims of libelants.

Whitehurst & Hughes, for libelants.

W. A. Swank, for the seaman.

HUGHES, J. The libelants, having a claim of \$63 for sails furnished the *Sea Lark* in January, 1887, filed a libel and issued process of arrest on the twenty-second of December, last. The libel was duly served, and

¹ Reported by Robert M. Hughes, Esq., of the Norfolk bar.

a sale of the vessel has been ordered. By admiralty rule 156 of this court, it is provided that under the requirements of general rule 29 in admiralty, prescribed by the supreme court of the United States, the answer of the claimant or of any respondent in a libel suit must be filed with the clerk at the return-day of the process, or within ten days thereafter. And rule 154 of this court provides that "in every libel *in rem* process of monition shall be made returnable on Tuesday of the week next after the filing of the libel." In the present case, process issued on the twenty-second of December, was duly served, and was returned on Tuesday, the twenty-seventh of the same month. All claims against the sloop, whether by answer, petition, or otherwise, should have been filed on the 27th, or within the next 10 days following, up to and including January the 6th. In point of fact, no answer or petition was filed, and the case matured as to the libelant; and if the judge of the court had been in Norfolk, a decree could have been taken as of right by the libelant. The judge, however, was absent on the sixth January, holding court at Alexandria; and the case which had matured stood over, under rule 32 of this court, until he should be in Norfolk. On the seventh January, one Mitchell, who had been an employe as cook on the Sea Lark, but had left her in August last, filed a petition in this cause, claiming wages for six months antecedent to his leaving the sloop, at \$20 per month. As the sloop will not sell for enough money to pay both claims, the question at this stage of the cause, before sale, is raised and argued by counsel, whether the claim of this Mitchell, who was once a seaman on the sloop, will have priority over the claim of the libelants, who supplied her with sails. To say nothing of the greater or less staleness of Mitchell's claim, I think the claim of the libelant against this sloop became vested as against those of all other creditors of the vessel on the sixth of January, when he became entitled to a decree. Before libels are filed, the claims against ships for maritime services of seamen or other classes of creditors are not of the nature of liens at common law. These creditors merely possess the privilege of proceeding against the vessel herself as a debtor, and of arresting and holding her for their claims. After the issuing of process, arrest of the vessel, and time given for claimants and other creditors to come forward and file their claims, and the libel suit thereby matures for hearing, then, and not before, do the rights of the libelant in the vessel become vested and operate as a lien for such amount as may be decreed by the court. If the claimant does not answer, and other creditors do not prefer their claims within the period of 10 days allowed by the court for that purpose, then the case matures in favor of the libelant as against all the world; and those having claims against the vessel who come in afterwards, come in, in every case, subject to the claim of the libelant. Their petitions filed subsequently to the maturing of the libel do not affect the lien of the libelant for the amount decreed. The rules of priority as between maritime claims, though binding as between other claimants, do not affect him. He is protected by his matured libel, and by the rule much respected in admiralty courts, *vigilantibus non dormientibus jura subveniunt*.

WHIPPLE v. MISSISSIPPI & YAZOO PACKET Co.

(District Court, S. D. Mississippi, W. D. January Term, 1888.)

1. SHIPPING—CHARTER-PARTY—SEAWORTHINESS—CONTINUING GUARANTY.

Libelant, the owner of a river steamer at Louisville, Kentucky, contracted with respondents that the master of the steamer should take her to Vicksburg, Mississippi, and employ her in respondents' service upon the Yazoo river for five months, guarantying that the vessel should have the necessary underwriters' certificate as to her seaworthiness. She was inspected at Louisville, and a certificate obtained from the secretary of the underwriters, but, upon a subsequent inspection, during her service, the certificate was withdrawn. The master charged the underwriters with fraud, threatened suit against them, settled up with respondents, took possession of the vessel, and respondents declared the contract at an end. *Held* that, under all the circumstances, the guaranty must be construed as a continuing one, not limited to the time the vessel went into respondent's employment.

2. RELEASE AND DISCHARGE—EFFECT.

Respondents, in a suit for damages for breach of charter-party, filed a cross-libel for damages for false representations. It appeared that before the commencement of the suit the master of the vessel had settled with respondents, giving them a receipt and acquittance for moneys due from them, and had taken possession of the vessel. *Held*, that the settlement was conclusive, and the cross-libel should be dismissed.

In Admiralty. Libel and cross-libel for damages.

Lee & McKee, for libelant. *Miller, Smith & Hirsh*, for respondents.

HILL, J. This case is submitted upon libel, answer, and cross-libel, answer, and proofs. The libel, in substance, charges that the libelant was the owner of the steamer Ed. Foster, and that on the 9th day of September, 1887, she, by J. W. Whipple, the master of said steamer, entered into a contract in writing with the defendant company, in the nature of a charter-party, by the terms of which said J. W. Whipple agreed, as master of said steamer, to take her to Vicksburg, Mississippi, and employ her in the service of the defendant company for a period of five months, and for the service of said master and said vessel the defendant company was to pay the sum of \$225 at the end of each month, and would also pay the expense of transporting said vessel from Louisville, Kentucky, to Vicksburg, Mississippi. That in fulfillment of said written contract,—a charter-party,—said master did transport said vessel to Vicksburg, where she was put into the Yazoo river trade, and so remained until the 26th day of October, 1887, when the defendant company declined to use her any longer under said charter-party, and declared said charter-party at an end, although libelant had, on her part, performed all the obligations on her part under said contract. That the master, acting for libelant, protested against the breach of said contract, upon the part of said defendant company, who absolutely refused to comply with their part of said contract, alleging that libelant had forfeited the same by reason of an alleged breach thereof by libelant of a guaranty in said charter-party touching the boat's underwriters' papers.