

On the question of seaworthiness, I have read the testimony carefully, and am satisfied that at the date of the charter-party the Director, contrary to the implied, as well as the express, warranty therein, was altogether unseaworthy; and the subsequent repairs did not make her seaworthy for such a voyage and cargo. The mere fact that she only brought \$3,000 at the marshal's sale, after near \$5,000 of repairs had been made upon her, is itself satisfactory evidence of her inherent weakness, and that nothing short of rebuilding her would make her seaworthy.

In conclusion I adopt the findings of the district judge, both of fact and law, and for the reasons given in his opinion, to which I can add nothing.

There must be a decree for the libelants accordingly.

THE C. P. RAYMOND.¹

BROWNE *et al.* v. THE C. P. RAYMOND.

(Circuit Court, S. D. New York. December 9, 1887.)

1. ADMIRALTY—PRACTICE—APPEAL FROM DISTRICT TO CIRCUIT COURT—INTEREST ON DECREE.

Where both parties appeal from the decision of the district court apportioning damages in a collision case, the circuit court, on affirming the decree of the district court, will not allow interest thereon.

2. SAME—APPEAL—COSTS—APPORTIONMENT.

Where the libelants and one of two claimants appeal from the decree of the district court apportioning damages in a collision case, and the same is affirmed by the circuit court, the costs of the other claimant (appellee) will be apportioned between the appellants, each appellant bearing his own costs.

In Admiralty. Libel for damages. On appeal from district court. 26 Fed. Rep. 281.

The libel in this cause was filed by the owner of the bark Margaret Mitchell for damages alleged to have been sustained by her and her cargo, while in tow of the tug C. P. Raymond, through a collision with a float in tow of the steam-tug George L. Garlick. The district court found that the collision occurred through the fault of the Raymond and the bark, and dismissed the libel as to the Garlick, and decreed a division of the damages and costs between the tug and bark, from which decree both appealed.

WALLACE, J Upon the authority of *The Rebecca Clyde*, 12 Blatchf. 403, interest after the date of the decree of the district court cannot be allowed the libelants. The costs of the claimant of the Garlick upon the appeal to this court are to be taxed against both appellants, and apportioned between the libelants and the claimants of the Raymond. The decree should provide for four days' notice to sureties on appeal, in accordance with rule 136 of the circuit court, and 144 of the district court. Each appellant must bear his own costs of the appeal. *The North Star*, 106 U. S. 29, 1 Sup. Ct. Rep. 41.

¹Affirming 26 Fed. Rep. 281.

SHARON v. TERRY *et al.*NEWLANDS *et al.* v. SAME.

(Circuit Court, N. D. California. September 3, 1888.)

1. ABATEMENT AND REVIVAL—DEATH OF PARTY—BILL OF REVIVOR—OBJECTIONS TO JURISDICTION.

Upon proceedings to revive a suit in equity, abated by the death of the complainant, for the purpose of executing a final decree which has been rendered in such suit, no objections can be taken which could have been urged when the original bill was pending, except want of jurisdiction, apparent upon the record. An attack upon a judgment or decree in a proceeding to revive it is a collateral attack, and can only avail when there is a want of jurisdiction, either of the parties or of the subject-matter.

2. MARRIAGE—FORGED CONTRACT—CANCELLATION—COURTS—FEDERAL CIRCUIT.

The circuit courts of the United States have jurisdiction to cancel a written contract of marriage on the ground of its forgery. Such contract, if genuine, and followed by the requisite consummation, imposes upon the husband from its date the obligation to support the wife, and confers upon the wife certain rights in his property, and such obligation and rights measure the sum or value of the matter in dispute in a suit to cancel such written contract, within the meaning of the acts of congress requiring a certain value to such matter in order to give the circuit courts of the United States jurisdiction. Where the controversy is not respecting the amount or value in dispute, such amount or value, when necessary to the jurisdiction, may be shown by the evidence produced in the case, or by affidavits filed when the question of jurisdiction is raised.

3. SAME—ACTION TO CANCEL—ABATEMENT AND REVIVAL—DEATH OF PARTY.

The right of action to cancel a marriage contract, which, if genuine, and followed by the requisite consummation as mentioned above, would create rights in the property of the alleged husband, survives to his executor or administrator.

4. SAME—ABATEMENT AND REVIVAL—TRANSFER OF PROPERTY.

The transfer of the property of the plaintiff in a suit to cancel a forged marriage contract while such suit is pending does not abate it, if the plaintiff retain a right during his life to claim the rents and profits thereof, and the purchasers or beneficiaries under such transfer are entitled to the benefit of the decree rendered in such suit canceling the contract, to protect the property from claims made under or by virtue of it.

5. COURTS—CONFLICTING STATE AND FEDERAL JURISDICTION.

Where the jurisdiction of the circuit court of the United States has attached in a suit brought by a citizen of a state other than that in which the court is held, the right of the plaintiff to prosecute his suit in such court to a final determination there cannot be arrested, defeated, or impaired by any subsequent action or proceeding of the defendant respecting the same subject-matter in a state court.

6. SAME—JURISDICTION FIRST ATTACHING.

Where different courts may entertain jurisdiction of the same subject, the court which first obtains jurisdiction will, with some well-recognized exceptions, retain it to the end of the controversy, either to the entire exclusion of the other, or to the exclusion so far as to render the latter's decision subordinate to that of the court first obtaining jurisdiction, and it is immaterial which court renders the first judgment or decree.

7. SAME—EXCEPTION TO RULE.

The exceptions to the rule that priority of jurisdiction controls priority of decision are—*First*, where the same plaintiff has asked, in different suits, a determination of the same matter; and, *second*, where the cases are upon contracts or obligations, which from their nature are merged in the judgment rendered, the subject upon which the first suit is founded having thus ceased to exist.